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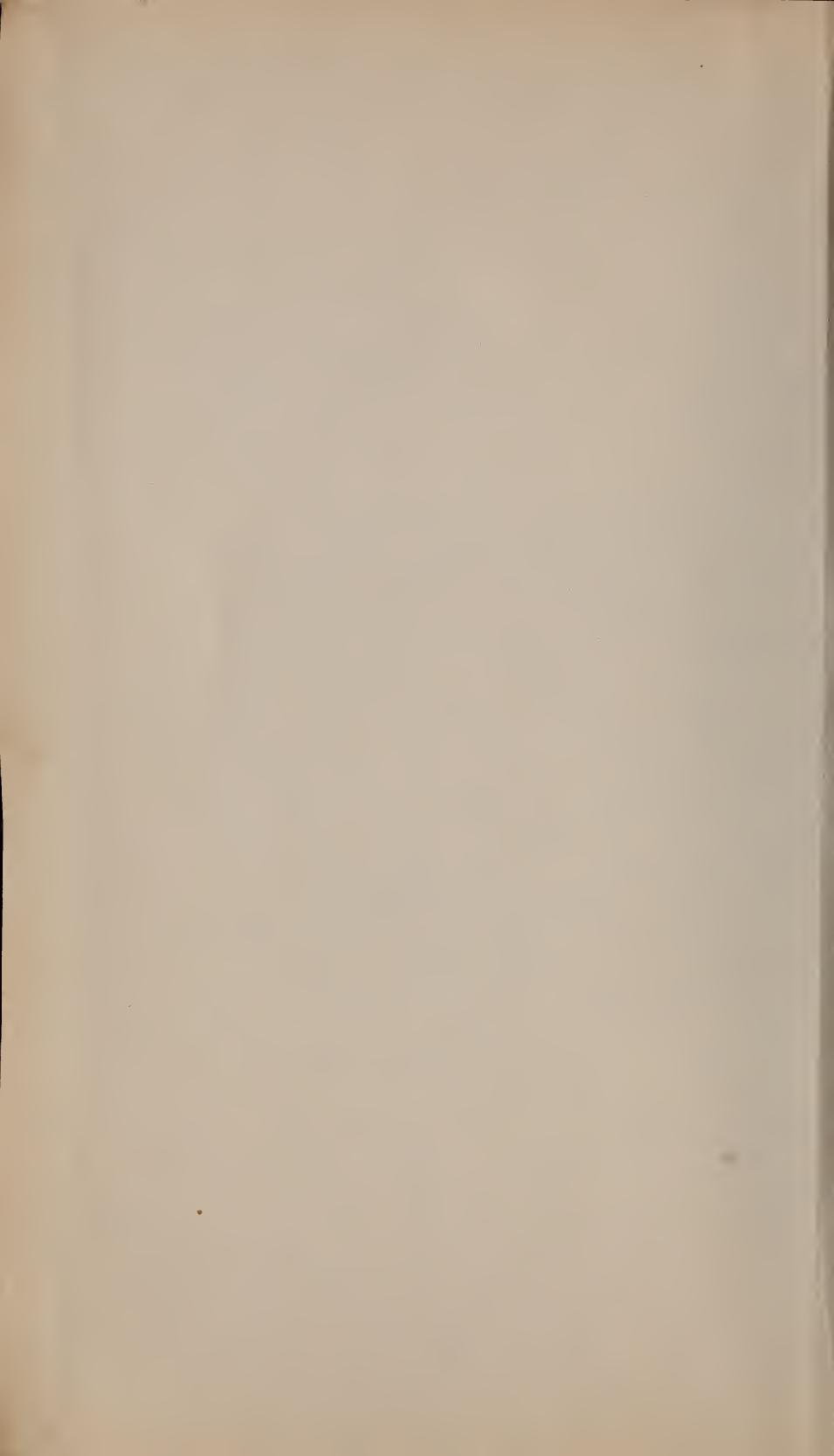


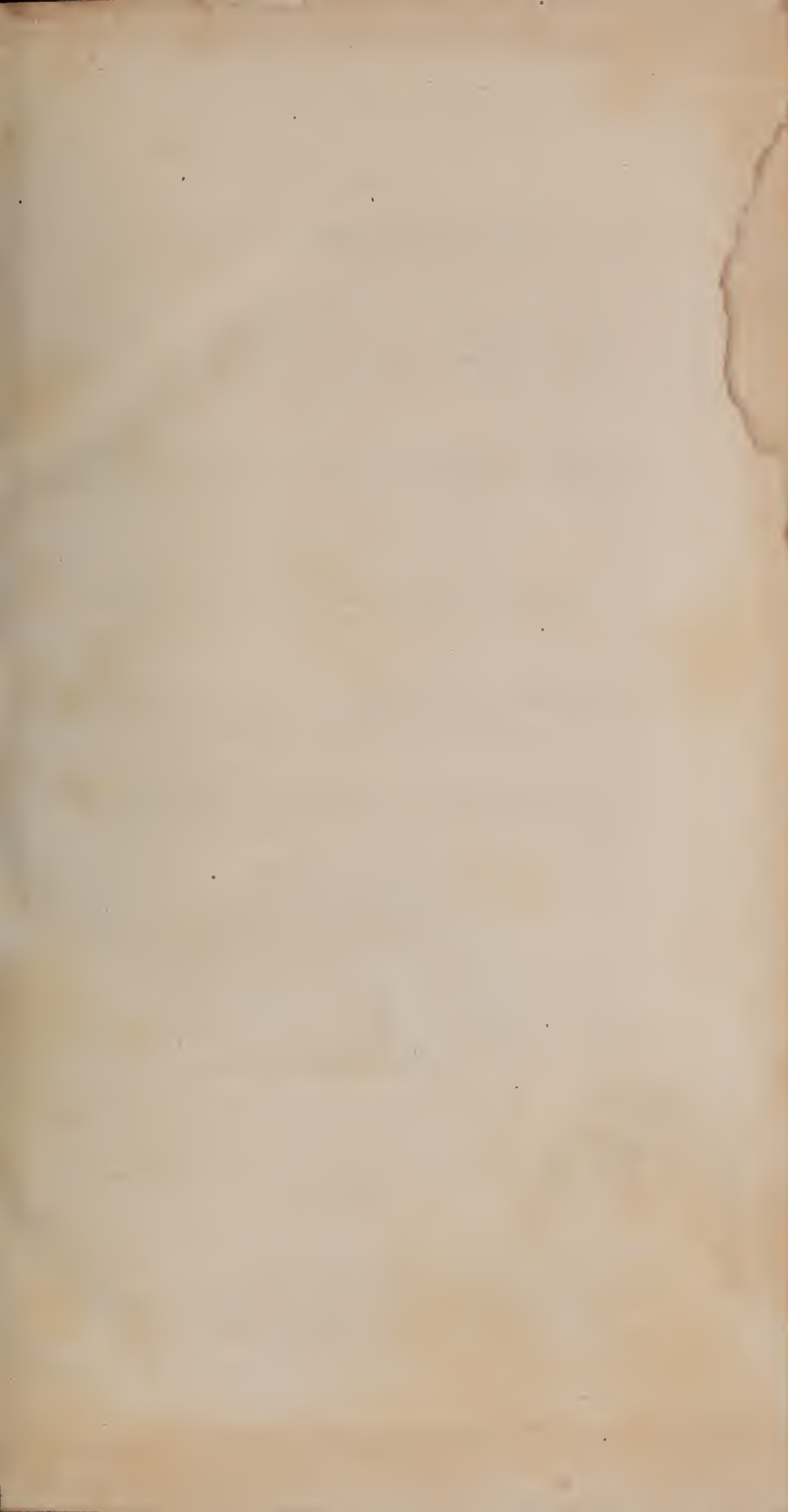
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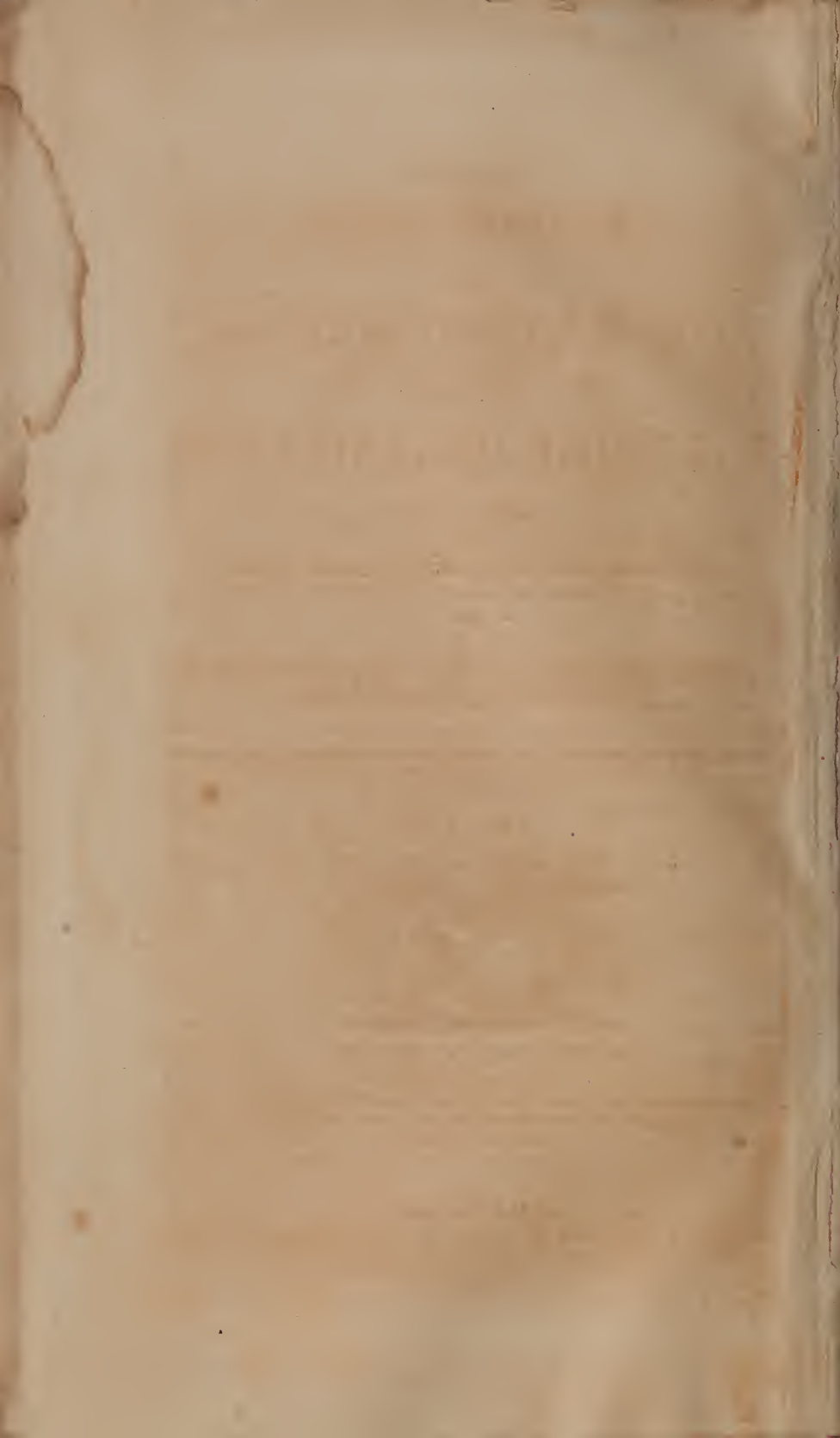
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A COMPILATION
OF THE
LAWS OF THE STATE OF ILLINOIS,
RELATING TO
TOWNSHIP ORGANIZATION
TO WHICH ARE ADDED
NUMEROUS PRACTICAL FORMS,
AND
COPIOUS NOTES, BY WAY OF INSTRUCTION, SUPPORTED BY
REFERENCES TO ADJUDICATED CASES.

EIGHTH EDITION, ENLARGED AND IMPROVED, CONTAINING ALL THE LAWS ON
THE SUBJECT, DOWN TO, AND INCLUDING THE ACTS OF 1865,
WITH AN APPENDIX.



BY ELIJAH M. HAINES,

COUNSELOR AT LAW,

Compiler of the "Town Laws of Wisconsin," and "Township Laws of Michigan," and
Author of "The Probate Manual," and "A Treatise for Justices of the
Peace and Constables."

CHICAGO:
CALLAGHAN & CUTLER,
LAW BOOKSELLERS AND PUBLISHERS.

1865.

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By ELIJAH M. HAINES,
In the Clerk's Office of the District Court of the United States, for the
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PREFACE.

THE ACT to provide for township organization having been thoroughly revised at the late session of the Legislature, and several other acts relating to the subject, likewise having passed, a new edition of a compilation of township organization laws is called for; indeed, the changes in the law are such as to entirely supersede the act of 1851 and acts amendatory thereof.

The township organization law of this State, as originally enacted, was borrowed from the law of the State of New York, but in adapting it to our general statutes, many omissions, errors and imperfections occurred, which have long demanded correction. This work was undertaken at the late session of the General Assembly, the object of the Legislature being to preserve as much of the act of 1851 and amendatory acts as could consistently be retained, making necessary corrections, and to add such new provisions as experience under the system seemed to demand, and withal to make no further changes in the law than were actually necessary to perfect the system, and adapt it to our general statutes. The subject originated in the House of Representatives, and was referred to the Committee on Township Organization, with instructions to inquire into the expediency of reducing the act to provide for township organization and the several amendatory acts into one act, and to amend the same, and report thereon. This committee consisted of Messrs. Wilmarth, Haines, Terry, Cummings, Broadwell, Harris of Bureau, Harris of Shelby, Allen, Harrington and Stoddard, being selected with reference to their familiarity with the subject; and the compiler, as one of their number, would testify to the great zeal and efficiency with which Messrs. Wilmarth, Cummings, Harris of Bureau, and indeed all his fellow committee-men, prosecuted the work assigned them. The aim of the committee was to reform, as far as possible, the errors and confusion existing in the old law, and to arrange the different subjects comprised, under distinct heads, in methodical order, rendering the act more perfect in itself, and a reference to any portion of it more easy and convenient. The time allowed the committee during a session of six weeks, in the midst of other pressing, and not less important legislative duties, was necessarily short, compared with the labor and care which this important subject demanded; if, therefore, some errors have chanced to occur or to escape their attention, it would not be surprising.

The bill as reported by the committee, passed both Houses with great unanimity, and is now before the people as the law; and it is the earnest hope of those who were engaged in the subject, that it may meet the approval of the people. The committee of the Senate to whom the subject was then referred, of which Hon. Washington Bushnell of La Salle was chairman, gave the matter

deliberate consideration, and to no one is more praise due, than to Mr. Bushnell for the unceasing labor he bestowed, and the interest he manifested in the subject.

It has been the object of the compiler to furnish in the present compilation, not only the township organization act, but also all the statute law in force which is applicable in counties adopting township organization, as far as it relates to or has connection with that system and the powers and duties of officers under it. The notes and forms are added as usual, at the foot of the page, and carried along in connection with the subject of the text, presenting the whole on the same page, and rendering the book of more value for convenience of reference. A large number of new forms has been added, and the notes and instructions have been greatly improved and enlarged by citing additional authorities, with the late decisions of the Supreme Court of our own State. The contents of the sections are indicated by side notes, as being more convenient and satisfactory than the insertion of heads over each section, according to the plan of former editions. These side notes the compiler has prepared himself, and rendered them much more full than they appear in the laws published by authority of the State.

The plan and entire arrangement of this compilation, the compiler claims to be original with himself, and has secured the copy-right under the laws of the United States. The plan of preparing and publishing laws of this nature, in the style of this compilation, has attracted the attention of other States, where the like system of self-government exists; and the compiler has, by State authority, furnished like compilations of laws for the States of Wisconsin and Michigan, showing the estimation in which his works are held in neighboring States. Trusting in a continued liberal patronage at home, the renewed efforts of the compiler to be useful are submitted to the consideration of a generous public.

ELIJAH M. HAINES.

WAUKEGAN, ILL., April 25, 1861.

PLAN OF THIS COMPILATION AND EXPLANATIONS.

For information as to the matter contained in this compilation, reference will be had to the Table of Contents following.

The various subjects embraced, have been classed under separate heads, entitled DIVISIONS, each DIVISION comprising as far as practicable a distinct subject.

The main features of the new township act, comprised in DIVISION I., remain as enacted by the General Assembly in 1851; the subsequent changes are noted in the margin at the side of the section, by figures indicating the year of the session at which the changes or amendments were made. Wherever those indications occur, it denotes that the section against which they occur are wholly new provisions, or have been to some extent amended; those sections against which such indications do not occur, remain as enacted in 1851.

AN APPENDIX is added embracing the acts affecting township organization, passed at the special session of April, 1861, embracing also other important laws of a general nature, rendering the compilation more complete.

A list of the organized townships in the State to April, 1861, is likewise added.

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INTRODUCTION.

THE system of township government or organization, as at present existing in the northern and eastern states, originated in New England, and is an evidence of the confidence which the early patriots of those colonies entertained in the ability of the people to govern and legislate for themselves.

Township organization is of modern date, and no scheme having much similarity to it can be found in ancient history. The municipal divisions of Athens and the other ancient republics were rather into castes or social ranks, than territorial; although the "demes" of ancient Athens, the Roman and Grecian colonies, and at a later day the free cities of mediæval Europe, possessed more or less of the privileges of a municipal corporation, such as choice of voters, election of officers, possession of a seal, management of funds, and the like. These cases, however, are exceptions; isolated instances of the universal instinct for self-government which is born with all men, but repressed under non-elective and irresponsible governments.

King Alfred, about A. D. 871, in order to prevent the rapines and disorders which prevailed in the realm, instituted a territorial division, however, which probably contains the first germ of our American idea of a township. This was, a division of the kingdom into "tithings," an Anglo-Saxon term equivalent to "tenthings," or groups of ten. Each tithing was the area inhabited by ten contiguous families, who were "frankpledges," *i. e.* free pledges or sureties, to the king for each other's good behavior, and were bound to have any offender within their district forthcoming. One of the principal inhabitants of the tithing was annually appointed to preside over it, entitled tithingman or headborough, being supposed the most discreet man within it.¹ As ten families constituted a tithing, so ten tithings

(1) 1 Bl. Com., 114.

formed a hundred, governed by a high constable or bailiff; and an indefinite number of hundreds composed a shire.¹

Tithings, towns or vills, were in law of the same signification. The word town or vill has, it seems, by the alteration of times and languages, now become in England a generical term, comprehending under it the several species of cities, boroughs and common towns. A city, says Blackstone, is a town incorporated, which is or hath been the see of a bishop. A borough is understood to be a town, either corporate or not, that sendeth burgesses to parliament.

Other towns there are, says the commentator, which are neither cities nor boroughs; some of which have the privilege of markets, and others not; but both are equally towns in law. In several of these towns there are small appendages belonging, called hamlets. These little collections of houses are sometimes under the same administration as the town itself, sometimes governed by separate officers, in which last case they are to some purposes in law looked upon as distinct townships.

The inhabitants of these tithings, towns or vills in England, possessed but few powers or privileges; on the contrary, their officers were all appointed from without, and they had no voice in their local concerns.

We now come to consider the first rise of the town organization in America. This appears, so far as the records show, to have been substantially a result of the experience of practical inconveniences, which the Puritans took such means to remedy as were suggested to them by their home recollections, but with whatever modifications their remarkably direct and practical common sense suggested.

The New England colonies were at first governed by a "general court," or legislature, composed of a governor and a small council, which court consisted of the most influential inhabitants, and possessed and exercised both legislative and judicial powers, which were limited only by the wisdom of the holders. They made laws, ordered their execution by officers, tried and decided civil and criminal causes, enacted all manner of municipal regulations, and in fact did all the public business of the colony.

The first legal enactment to establish towns, that of the General

(1) Shire is a Saxon word signifying a division; but a county, *Comitatus*, is plainly derived from *comes*, the Count of the Franks, that is, the earl or alderman (as the Saxons called him) of the shire, to whom the government of it was intrusted. This he usually exercised by his deputy, still called in Latin *vice comes*, and in English the Sheriff, Shrieve or Shire-reeve, signifying the officer of the shire upon whom, by process of time, the civil administration of it now totally devolved.—1 *Bl. Com.*, 117

Court of Massachusetts, of March, 1635, so far as it indicates any motive, implies convenience only as the reason of the law. It provides that whereas "particular towns have many things which concern only themselves, and the ordering of their own affairs, and disposing of business in their own town," therefore "the freemen of every town, or the major part of them, shall only have power to dispose of their own lands and woods, with all the appurtenances of said towns, to grant lots, and make such orders as may concern the well ordering of their own towns, not repugnant to the laws and orders established by the General Court." They might also impose fines of not more than twenty shillings, and "choose their own particular officers, as constables, surveyors for the highways, and the like."¹ Evidently, this enactment relieved the General Court of a mass of municipal details, without any danger to the powers of that body in controlling general measures or public policy. Probably also a demand from the freemen of the towns was felt, for the control of their own home concerns.

Similar provisions for the incorporation of towns were made in the first constitution of Connecticut, adopted in 1639; and the plan of township organization, as experience proved its remarkable economy, efficacy and adaptation to the requirements of a free and intelligent people, became universal throughout New England, and went westward with the emigrants from New England, into New York, Ohio, and other Western States, including the northern parts of Illinois.

But a different policy determined the character of the municipal institutions of the southern part of our state. This was the "county system." This plan originated with Virginia, whose early settlers soon became large landed proprietors, aristocratic in feeling, living apart in almost baronial magnificence on their own estates, and owning the laboring part of the population. Thus the materials for a town were not at hand, the voters being thinly distributed over a great area. The county organization, where a few influential men managed the whole business of the community, retaining their places almost at their pleasure, scarcely responsible at all except in name, and permitted to conduct the county concerns as their own ideas or wishes might direct, was moreover consonant with their recollections or traditions of the judicial and social dignities of the landed aristocracy of England, in descent from whom the Virginia gentlemen felt so much pride. In 1634, eight counties were organized in Virginia;

(1) Palfrey, *History of New England*, vol. 1, p. 434.

and the system, extending throughout the state, has spread into all the southern states, and some of the northern states, unless we except the nearly similar division into "districts" in South Carolina, and that into "parishes," retained by Louisiana from the French laws.

Illinois, which with a vast additional territory, became a county of Virginia on its conquest by Gen. George Rogers Clark, retained the county organization, which was formally extended over the state by the constitution of 1818, and continued in exclusive use until the constitution of 1848. Under this system, as in other states adopting it, most local business was transacted by three commissioners in each county, who constituted a county court, with quarterly sessions. During the period ending with the constitutional convention of 1847, a large portion of the state had become filled up with a population of New England birth or character, daily growing more and more compact and dissatisfied with the comparatively arbitrary and inefficient county system. Under the influence of this feeling the constitutional provision of 1848, and subsequent law of 1849 were enacted, permitting counties to adopt a township organization; according to which all the counties north of the Illinois river, and a large number south of it, have so organized.

The main argument for township organization is, perhaps, its extreme value as a school of political action. The clearest and best writer on American institutions, Alexis de Tocqueville, in his celebrated work, "Democracy in America," says: "Local assemblies of citizens constitute the strength of free nations. Municipal institutions are to liberty what primary schools are to science; they bring it within the people's reach, they teach men how to use and how to enjoy it." Did space permit, an astonishing mass of unanimous testimony to the same point could be cited from practical statesmen, old and new, foreign and native; from Lieber, Malesherbes and Guizot, Webster and Choate, Adams and Jefferson, Sumner, Parker, and many more. These small independent republics, with their unlimited sovereignty in matters of local concern, are the cradles and nurseries of that habit of political debating and acting, which is the indispensable training of an intelligent and useful citizen.

It is not claimed, of course, that each township should exercise so unbounded an authority as belonged to the ancient republics; but only that they should use it in reference to local matters, which in-

terest them only, and which no others can understand or direct so well. In the immense territories which form the states of the Union, or in the Union itself for federal concerns, it is impossible for all the voters to meet and transact the business of government. Hence that modification of a "pure democracy," which has given us our representative system of government. If such a universal meeting were conveniently practicable, it would be practiced; in that case, no voter would delegate by authority; but it is not. In town business, however, it is practicable. The people of a township can readily meet for conference, and discuss and decide all the multitude of local interests which concern their township, with a far better understanding of them than any agent or representative could exercise.

The great extent of the territory of the state of New York, from which the township system as adopted in this state is chiefly derived, rendered it impossible or at least impracticable to send a representative from each town to the popular branch of the state legislature, as was done in the New England states. Under these circumstances, an intermediate board was created in each county, called a board of supervisors, and composed of one delegate from each town. This board formed a deliberative, or kind of legislative body, taking a large portion of the powers delegated in the New England States to the state legislatures. It has been made an objection to this plan of organization, that it increases the expense of transacting the business of the county. But the answer is believed conclusive; that the only additional expense, if any, arises from the excess of compensation paid to the additional members of the county board; while the fact is that the business of the county is much reduced under the town organization, and not one-fourth of the time is required to transact the business. Besides, a cheap government is not necessarily the best. Cheapness is not the primary object in choosing a government, but excellence. If cheap governments were the only thing required, we should abolish the legislative branch of our state government, and leave our laws to be made by the executive or the supreme court. Or, which would be still cheaper, perhaps, we could let out the making of our laws by contract and competition to the lowest bidder, or to whomsoever would pay the state most for the privilege. There would be no want of proposals.

It has just been observed that the township system as adopted in this state is the same as that of the state of New York, which differs in some respects from that of New England, and may, perhaps, be considered to some extent an improvement upon the system in those

states. But in all these states, various questions have from time to time arisen under the peculiarity of the law, for the determination of the courts; the adjudications of which may be gathered from the reports of cases determined, and serve as a precedent or guide for such other states as may adopt a like system. In the state of New York, in particular, from which the township law of this state has been in most respects literally copied, the courts, it would seem, have determined nearly every question of importance which can possibly arise under the system;¹ hence it has been the aim in this work to add full notes with references to those cases, together with those of our own and other states, which will serve not only to guide the inexperienced, but may be found of much service to the profession by furnishing a ready reference to adjudicated cases. The forms which have been adopted as far as could be found applicable, are taken from those most approved in the state of New York. It is therefore confidently believed that this portion of the work will likewise meet with general favor. No pains or labor has been spared to make a concise and perfect legal guide for town officers, and others who may be called upon to render service under the law.

(1) Where a statute is copied from one in another state, which has there received a construction which is consistent with the spirit and policy of our laws, such construction may with propriety be adopted by our courts.—*Rigg v. Wilton*, 13 Ills., 15.

LAWS OF ILLINOIS,

RELATIVE TO

TOWNSHIP ORGANIZATION.

DIVISION I.

GENERAL PROVISIONS CONCERNING TOWNSHIP ORGANIZATION.

AN ACT to reduce the act to provide for Township Organization, and the several acts amendatory thereof, into one act, and to amend the same. In force April 1, 1861.

ARTICLE FIRST.

PROCEEDINGS TO ADOPT TOWNSHIP ORGANIZATION.

SECTION 1. *Be it enacted by the People of the State of Illinois,* Counties may vote for or against adoption. *represented in the General Assembly,* That at any general election that may be holden in the several counties in this State, the qualified voters in any county may vote for or against township organization in any county in this State.

§ 2. The county court, on petition of fifty legal voters of said county, shall cause to be submitted to the voters of the county the question of township organization, under this act, by ballot, to be written or printed, or partly written or partly printed, "For Township Organization," or "Against Township Organization,"—to be canvassed and returned in like manner as votes for State and county officers.¹ Question of adoption to be submitted on petition.

§ 3. The clerk of the county court shall enter an abstract of Election returns.

¹ *Form of Petition to County Court for submission of question of Township Organization.*

To the Honorable the county court of the county of *Sangamon*:

The undersigned, legal voters of said county of *Sangamon*, would respectfully represent, that in their opinion the people of said county desire to adopt township organization: they do therefore petition your honorable body, to cause to be submitted to the voters of said county, at the next general election, to be held on the first Tuesday after the first Monday in November next, the question of township organization, that they may vote upon the adoption thereof.

And your petitioners will ever pray.

Dated this — day of —, A. D. 18—.

Clerk to certify returns to auditor.

the returns of said election, to be made out and certified as in elections for State and county officers, record the same at length upon the record of the county court of the county, and shall certify the same to the Auditor of Public Accounts.

Majority vote required.

§ 4. If it shall appear, by the returns of said election, that a majority of the legal voters of said county are for township organization, then the county so voting in favor of its adoption shall be governed by and subject to the provisions of this act, on and after the first Tuesday of April next succeeding: *Provided*, that a majority of the voters voting at such election shall be taken and deemed a majority of the voters of said county.¹

County court to appoint commissioners to divide county.

§ 5. The county court shall, at its next session, appoint three commissioners, residents of the county, to divide the county into towns or townships; and the said commissioners' services shall be audited by the first board of supervisors, and paid by the county.

Manner of dividing into towns.

§ 6. The commissioners shall proceed to divide such county into towns, by making as many towns as there are townships, according to government surveys. Where fractions of townships are

Fractional townships.

caused by the county lines not being in accordance with the surveyed townships, then the commissioners may attach such fractions to adjoining towns, where the number of inhabitants or the amount of territory shall not be sufficient for a separate town. Where a

Fractions may be joined.

surveyed township shall have too few inhabitants for a separate organization, then such township may be added to some adjoining town, or such township may be divided between two or more towns, for the time being. And when creeks or rivers may so divide such township as to be inconvenient for transacting town business, then such creek or river may be made the town boundary, and the town fractions so formed may be disposed of as fractions caused by county lines.²

When creeks or rivers divide.

Naming of towns.

§ 7. Towns shall be named in accordance with the express wish of the inhabitants of the town; and if there shall not be a degree of unanimity as to the name, the commissioners may designate the name.

Report of commissioners.

§ 8. The commissioners so appointed shall make a written re-

(1) The right of a county to adopt township organization under the provisions of our constitution, is expressly made to depend upon an affirmative vote of a majority of all the citizens within the county, entitled to vote on the question.

The legislature does not possess the power to provide any other mode of township organization than under and by virtue of the sixth section of the seventh article of the constitution.

The power of the county court over a business of the county, continues until the township organization is adopted by an affirmative vote of a majority of all the legal voters of a county.

—*People v. Brown et al.*, XI Ills., 478.

This decision was made under the township act of 1849, which was substantially the same as this act on the subject in question, except that by this act it is provided that a majority of the voters voting at such election shall be taken and deemed a majority of the voters of said county which is settling the question of evidence, by which to determine the majority of legal voters of the county at the time of taking the vote.

(2) It is the intention of the law that the division of the county into towns by the commissioners, shall be made in accordance with the lines of the surveyed or government townships, so that each government township shall be set off and erected as an organized town under this act, and it is the duty of the commissioners to divide the county accordingly; it would seem that they have not authority to divide it otherwise. The instances where they can depart from this rule are clearly expressed in the above section. The powers of the board of supervisors subsequently to create new towns and change town boundaries, are not thus restricted. See Sec. 1, ART. THIRD, *post*, p. 17.

port of their proceedings, giving the names and bounds of each town, and present such report to the clerk of the county court, on or before the first day of March next succeeding.¹

§ 9. The clerk of the county court shall thereupon make out notices for each town, designating a suitable place for holding the first town meeting in such town, which shall be holden on the first Tuesday of April next thereafter, and shall deliver such notice to the sheriff of the county, who shall cause the same to be posted in not less than three of the most public places of the township, and not less than fifteen days before the first Tuesday in April aforesaid.²

¹ *Form of Report of proceedings of commissioners appointed to divide county into Towns.*

To the Honorable the county court of the county of Sangamon :

The undersigned, commissioners appointed by said court at the December term thereof, A. D, 18—, to divide said county of Sangamon into towns, agreeably to the statute to provide for township organization, respectfully report, that they have performed the duty assigned to them, and have divided said county into towns and given names thereto as follows, to wit :

All that territory known and described by government survey as township number —, of range number —, is erected into a town to be called the town of —.

All that territory known and described, &c., (*continue by describing each town as aforesaid.*)

All of which is respectfully submitted.

A. B., }
C. D., } Commissioners.
E. F., }

² *Form of Notice by Clerk of the County Court for first Town Meeting.*

TOWN MEETING NOTICE.

The citizens of the town of Lyons, in the county of Cook, and state of Illinois, are hereby notified to meet at (*state the place of meeting,*) in said town, on Tuesday, the — day of April, A. D. 18—, being the first Tuesday in said month, at 9 o'clock in the forenoon, and hold their first town meeting, for the purpose of organizing said town, in conformity with the provisions of the statute ; said meeting, when then and there convened,

1. To choose a moderator to preside at said meeting.
2. To choose a clerk pro tem. to act at said meeting.
3. To elect one supervisor, one town clerk, one assessor, one collector, one overseer of the poor, three commissioners of highways, two constables, two justices of the peace, so many overseers of highways as there may be road districts created, and so many pound masters as there may be pounds determined upon and established in said town.

4. To determine upon and appoint the place of holding the next annual town meeting.

5. To (*enumerate any further specific subjects that may be thought proper, upon which the meeting may be called to act, and conclude by adding,*)

And to act upon any additional subjects which may, in pursuance of law, come before the meeting when convened.

Given under my hand at Chicago, in said county of Cook, this — day of — A. D. 18—.

CHAS. B. FAREWELL,
Clerk of the County Court of Cook County.

NOTE. It is probably unnecessary under the law, to enumerate the subjects upon which the meeting will be called upon to act, as given in the preceding form, yet it is quite proper to

Clerks to transmit abstract of commissioners' report to auditor. § 10. Each clerk of the county court shall, within thirty days after receiving such report of the commissioners, transmit, by mail, to the auditor of public accounts of this state, an abstract of such report, giving the bounds of each town and the name designated; and said clerk shall record, in a book for the purpose, a description of each town as fully as the report of said commissioners.

Similarity of name in towns. § 11. If the auditor of public accounts, on comparing the abstracts of the reports from the several counties, shall find that any two or more townships have names alike, he shall transmit to the clerk of the county court of the county or counties which have to alter the name or names of such town or towns; and the board of supervisors of such county shall, at its next meeting thereafter, adopt for such town some name different from those heretofore named, so that no two towns organized under this act shall be named alike; and when such name shall be adopted, the clerk of the county court shall inform the auditor of public accounts, as before directed.

Auditor, to record names and boundaries. § 12. The auditor of public accounts shall make a record of the names and boundaries of the several towns organized under this act.

ARTICLE SECOND.

OF THE POWERS AND RIGHTS OF TOWNS AS BODIES CORPORATE.

Capacity of towns. § 1. Each town, as a body corporate, has capacity:
To sue and be sued. 1st. To sue and be sued, in the manner prescribed by the laws of this state.

To purchase lands. 2d. To purchase and hold lands within its own limits, and for the use of its inhabitants, subject to the power of the general assembly.

Make contracts and hold personal property. 3d. To make such contracts, purchase and hold such personal property, as may be necessary to the exercise of its corporate or administrative powers.¹

To make orders. 4th. To make such orders for the disposition, regulation or use

do so in giving notice of their first town meeting, as it is presumed the inhabitants generally will be unacquainted with the law; such notice will, therefore, serve, in some degree, to inform them in advance as to their powers and duties on the occasion, and enable them to be better prepared to act.

The division of towns into road districts has been assigned by this act (Art. 17, § 1,) to the commissioners of highways. In the absence of such commissioners, however, at the first town meeting, it has been the practice for the electors, when convened at such meeting, to make this division themselves, to enable them to proceed at the same meeting to the election of overseers of highways. To which end it is proper that a committee of three or more, coming from different parts of the town, should be appointed at an early hour to prepare and report a plan for such division.

(1) Where a contract is made in pursuance of a vote of a town, but before the contract is performed the vote is rescinded, it seems that the person with whom the contract is made is not affected by the rescission, unless he had notice thereof, in which case it would be otherwise. *Allen v. Taunton*, 19 Pick., 485.

A town, as such, has no authority to contract with a plank-road company, or other corporation, granting them the use of a highway in the town; as a corporation a town has nothing to do with, and no interest in the highways within its limits; the title to the soil is in individuals; the right to their use belongs to the inhabitants of the town, not exclusively, but in common with the whole public. The care and superintendence of highways has been committed to certain officers of the town, chosen for that purpose, and whose duties are prescribed by law. See 22 Barb., 634.

of its corporate property, as may be deemed conducive to the interests of its inhabitants.

§ 2. No town shall possess or exercise any corporate powers, except such as are enumerated in this act, or shall be specially given by law, or shall be necessary to the exercise of the powers so enumerated or granted.¹ Restriction of power.

§ 3. All acts or proceedings by or against a town, in its corporate capacity, shall be in the name of such town; but every conveyance of land within the limits of such town, made, in any manner, for the use or benefit of its inhabitants, shall have the same effect as if made to the town by name.² Proceedings and conveyances.

ARTICLE THIRD.

OF THE ALTERATION OF BOUNDARIES AND DIVISION OF TOWNS, AND EFFECT THEREOF ON THEIR CORPORATE RIGHTS.

§ 1. The board of supervisors of each county shall have full and complete power and jurisdiction to alter the boundaries of towns, to change town lines, and to divide, enlarge and to create new towns, in their respective counties, to suit the convenience of the inhabitants residing therein; but no new town shall be created, under the provisions of this act, unless there shall be at least thirty legal voters residing in such new town, nor unless at least twenty of such legal voters of such town shall petition for such alteration; nor shall any new town hereafter be made or created, or any town divided, or the boundaries of any town changed by the board of supervisors, within their respective counties, without at least sixty days' notice thereof has been given, before the presentation of the petition therefor, by posting up not less than five notices in the most public places of the town or towns interested, and by also publishing such notice at least once in some newspaper published in the county wherein said towns are situated, if any shall be published therein. Alteration of boundaries and new towns. 1854. Petitions for changing boundaries. Notice.

§ 2. In case any town, in any county wherein township organization has been or may be hereafter adopted, shall refuse or neglect to organize and elect town officers, at the time fixed by law for holding annual meetings, it shall be lawful for twelve freeholders of the town to call a town meeting for the purposes afore- Neglect to elect town officers. 1857. Freeholders may call town meeting.

(1) Towns may be considered as *quasi* corporations, with limited powers co-extensive with the duties imposed on them by statute or usage, but restricted from a general use of the authority which belongs to corporations by common law.—*Rumford v. Wood*, 13 Mass., 193.

These organized towns or townships are not municipal corporations in the sense which the term is used in our constitution and statutes. They are regarded as *quasi* corporations. See *Norton v. Peck*, 3 Wisconsin R., 714.

The whole power and capacity of towns, as corporations, is derived from and conferred by statute, and is specified and confined by certain functions only. Their authority to contract or assume liabilities is restricted to cases where such action is necessary for the exercise of their appropriate functions as corporations, and their power to sue and be sued must be limited to cases where the assertion of their corporate rights, or the enforcement of their corporate liabilities, requires such proceeding.—22 Barb., 631.

(2) Where a cause of action exists in behalf of a town, and no officer is by statute authorized to prosecute for such cause of action, it is proper for the electors when convened at town meeting to direct such action to be brought, for which purpose they may appoint an agent to institute and prosecute the same, but such suit must be brought in the name of the town. *Cornell v. Guilford*, 1 Den., 510.

said, by posting up notices in six public places of such town, giving at least ten days' notice of such meeting; which notice shall set forth the time, place and object of such meeting; and the electors, when assembled by virtue of such notice, shall have and possess all the powers conferred upon them at the annual town meeting.¹ In case no such notice shall be given, as aforesaid, within thirty days after the time for holding the annual town meeting, the board of supervisors of the county shall, upon the affidavit of any freeholder of said town, filed in the office of the county clerk or clerk of the board, setting forth the facts, proceed, at any regular or special meeting of the board, and appoint the necessary town officers for such town; and the persons so appointed shall hold their respective offices until others are chosen or appointed in their places, and shall have the same powers, and be subject to the same duties and penalties, as if they had been duly chosen by the electors of the town.

Appointment of town officers by board of supervisors.

Failure to qualify.
1857.

Annex to adjoining towns.

Division of real estate and division of townships.
1861.

§ 3. Whenever it shall be made to appear to the board of supervisors that the town officers appointed by them, or any preceding board, as provided in the foregoing section, shall have failed to qualify, as required by law, so that such town can not become organized, the board of supervisors may annex such town to any adjoining town; and the said town so annexed shall thereafter form and constitute a part of said adjoining town.

§ 4. When a town seized of real estate shall be divided into two or more towns, the supervisors and assessors of the several towns constituted by such division shall meet as soon as may be after the first town meetings subsequently held in such towns, and, when so met, shall have power to make such agreement concerning the disposition to be made of such town property and the apportionment of the proceeds as shall be equitable, and to take all measures and execute all conveyances which may be necessary to carry such agreement into effect.²

¹ *Form of Notice by twelve freeholders calling town meeting on default of annual meeting.*

TOWN MEETING.

Notice is hereby given by the undersigned, freeholders of the town of _____, in the county of _____, in the state of Illinois, that a meeting of the electors of said town will be held on the _____ day of _____, A. D. 18—, at (state place) for the purpose of electing all such officers as said town may be entitled to by law, and transacting all such business as the electors have power to transact at the annual town meeting; said town having neglected to organize and elect town officers at the time fixed by law for holding annual meetings, which meeting will be called to order between the hours of nine and ten o'clock in the forenoon, and be kept open until six o'clock in the afternoon.

Dated at _____, this _____ day of _____, A. D. 18—.

(To be signed by twelve freeholders.)

² *Form of agreement by Supervisors and Assessors in case of division of Town, concerning disposition and apportionment of real estate.*

This agreement, made this _____ day of _____, A. D. 18—, by A. B., supervisor and C. D., assessor of the town of _____, on the part of said town,

§ 5. When any such town shall be altered in its limits, by the annexing of a part of its territory, to another town or towns, the supervisors and assessors of the town from which such territory shall be taken and of the town or towns to which the same shall be

Division of prop-
erty when bound-
aries altered.

1861.

and E. F., supervisor, and G. H., assessor of the town of ——— on the part of said town of ———, in the county of *Bureau*, and state of Illinois, witnesseth: That whereas the town of ———, which formerly comprised the territory now composing the aforesaid towns of ——— and ———, has lately been divided by proper authority, into two towns, named and styled as aforesaid, (*or as the case may be*,) and whereas said town of ———, was at such division thereof seized of the following real estate, to wit, (*here describe the premises*,) Now therefore it is agreed by and between said supervisors and assessors on the part of their respective towns, that said real estate be divided and disposed of for the benefit of said towns, as follows: that portion thereof described as follows, (*here describe it*,) shall be and remain the property of said town of ———, and the balance thereof described as follows, (*here describe the remaining portion of said premises*,) be sold within three months from this date for the highest sum which the same can be sold for, and the proceeds thereof be paid over to said town of ———.

In witness whereof said supervisors and assessors have hereunto set their hands and private seals, the day and year first above written.

A. B., [SEAL.]
Supervisor.
C. D., [SEAL.]
Assessor.
E. F., [SEAL.]
Supervisor.
G. H., [SEAL.]
Assessor.

NOTE. The foregoing form can be varied to suit the circumstances of each case. Whatever agreement is made by the supervisors and assessors, should be reduced to writing in proper form, and a copy filed with the town clerk of each town interested. When a division of the property is impracticable, it may be appraised by the supervisors and assessors, and the town wherein it is situated may pay over to the other town its equitable share of the valuation and retain the whole property, when such course is deemed most advisable. It will be seen that the law has clothed the supervisors and assessors with ample authority for a proper division of the real estate; it has authorized them to make agreement concerning the disposition thereof and such apportionment of proceeds as shall be equitable, and to take all measures and execute all conveyances necessary to carry their agreement into effect; therefore when it is agreed that the property or any part thereof shall be sold, the supervisors and assessors are authorized to execute the conveyance. A question may arise as to who should execute the conveyance, whether the supervisor and assessor of the town wherein the real estate is situated, in case of lying all in one town, or whether by the supervisors and assessors of the several towns interested. It can do no harm for them all to join in the conveyance. Indeed, such may be the more proper course.

Form of Deed of Conveyance by Supervisors and Assessors conveying real estate where town is divided.

This indenture, made this — day of —, A. D., 18—, between A. B., supervisor, and C. D., assessor of the town of —, E. F., supervisor, and G. H., assessor of the town of —, which towns are in the county of *Bureau*, and state of Illinois, party of the first part, and *Joseph W. Harris* of said county and state, party of the second part, witnesseth: that whereas said town of — has lately been divided by proper authority, and said town of — erected therefrom, (*or as the case may be*,) and whereas said town of — was at the time of such division seized of the following real estate, (*here describe the whole premises*,) and whereas it was agreed by the supervisors and assessors of each of the aforesaid towns, that the following portion of said real estate should be disposed of for the benefit of said town of —, (*or as the agreement may be*,) as being the equitable share thereof to which said town would be entitled in consequence of such division, to wit,

annexed shall, as soon as may be after such alteration, meet for the purpose, and possess the powers provided in the last preceding section.

Division of moneys in towns divided or altered.

1861.

§ 6. When a town, possessed of or entitled to money, rights or credits or other personal estate, shall be so divided or altered, such personal estate, including moneys, shall be apportioned between the towns interested therein, by the supervisors and assessors of such towns, according to the amount of taxable property in the town divided or altered, as the same existed immediately before such division or alteration—to be ascertained by the last assessment list of such town; and such supervisors and assessors shall meet, for the purposes aforesaid, as soon as may be after the first town meetings subsequently held in such towns.¹

(here describe the portion of the premises to be disposed of.) Now therefore said party of the first part for and in consideration of the sum of _____ dollars paid by said party of the second part, the receipt whereof is hereby acknowledged, have and do grant, remise, release, convey and confirm unto said party of the second part, and to his heirs and assigns forever, all the following described premises, lying and being in said town of _____, in the county of Bureau and state of Illinois, to wit, *(here describe the premises to be conveyed.)* To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in any wise appertaining, and all the estate, right, title, interest and claim whatever which said towns of _____ and _____, or either of them may have either in law or equity, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof, said party of the first part have hereunto set their hands and seals the day and year first above written.

Signed, sealed, and delivered }
in the presence of }

A. B., [SEAL.]
Supervisor.

C. D., [SEAL.]
Assessor.

E. F., [SEAL.]
Supervisor.

G. H., [SEAL.]
Assessor.

NOTE. The foregoing deed should be acknowledged in the usual form.

(1) The proceedings and doings of the supervisors and assessors ought properly to be reduced to writing, as a memorandum showing how and in what manner the money, rights, credits, and other personal property is disposed of, or apportioned, and how existing debts are apportioned, and a copy filed with other papers, if any, with the town clerk of each town interested, the following is suggested as a form for such writing or memorandum.

Form of Proceedings of Supervisors and Assessors in apportioning property in case of division of towns.

At a meeting of the supervisors and assessors of the towns of _____ and _____, in the county of _____, convened at the office of the town clerk of said town of _____, on the _____ day of _____, A. D. 18____, *(if adjournments are had state the adjournment,)* for the purpose of making agreement concerning the disposition of the real estate lately belonging to said town of _____, and apportioning the proceeds thereof according to law in such cases, in consequence of a division of the original town of _____; also for the purpose of apportioning between said towns, the money, rights, credits and other personal property lately belonging to, and the debts owing by said town of _____, the following proceedings were had. The real estate of said original

§ 7. Whenever a meeting of the supervisors and assessors of two or more towns shall be required, in order to carry into effect the provisions of this article, such meeting may be called by either of said supervisors; but the supervisor calling the same shall give at least three days' notice, in writing, to all the other officers of the time and place at which such meeting is to be held.¹

§ 8. The preceding sections shall not, however, apply to any cemetery or burial ground, but the same shall belong to the town within which it may be situated after a division shall have been made.^{1891.}

§ 9. Debts owing by a town so subdivided or altered shall be apportioned in the same manner as the personal property of such town; and each town shall thereafter be charged with its share of such debts, according to such apportionment.^{1891.}

ARTICLE FOURTH.

OF TOWN MEETINGS AND THE POWERS OF ELECTORS.

§ 1. The citizens of the several towns of this state, qualified by the constitution to vote at general elections, shall annually assemble and hold town meetings in their respective towns, on the first Tuesday of April, at such place in each town as the electors thereof, at

town of ——— was ordered to be disposed of and proceeds apportioned according to written agreement between said supervisors and assessors, dated ———. Said town was found to be possessed of money to the amount of ——— dollars, which was apportioned as follows, (*state how apportioned.*) Said town was found to be entitled to money arising from (*state the source from which the money is to be derived*) to the amount of ——— dollars, which was apportioned as follows, (*state how apportioned, and continue in like manner setting forth all rights, credits and personal property of the town, and debts owing, and how apportioned between the towns.*)

- A. B., Supervisor of the town of ———.
- C. D., Assessor of the town of ———.
- E. F., Supervisor of the town of ———.
- G. H., Assessor of the town of ———.

¹Form of Notice by Supervisor to other officers to meet and apportion property in case of division or alteration of town.

To John Clarke, supervisor (or assessor) of the town of ———, county of Bureau:

You are hereby notified that a meeting of the supervisors and assessors of the towns of ——— and ———, will be held at, (*state the place where,*) on Monday, the — day of —, A. D., 18—, at the hour of ten o'clock in the forenoon, for the purpose of making agreement concerning the disposition of the real estate lately belonging to said town of ———, and apportioning the proceeds thereof according to the law in such cases, in consequence of a division of the original town of ———, and the erection therefrom of the town of ———; also for the purpose of apportioning between said towns the money, rights, credits, and other personal property, lately

Place.
Notice.

1861.

Town officers to
be elected.

their annual town meetings, shall from time to time appoint ;¹ and notice of the time and place of holding such meeting shall be given by the town clerk, by posting up written or printed notices in three of the most public places in said town, at least ten days prior to said meeting ; and if there shall be a newspaper published in said town such notice shall be inserted at least once therein, prior to said meeting.²

§ 2. There shall be chosen, at the annual town meeting, in

belonging to said town of ———, at which time and place you are respectfully requested to attend.

Dated at *Milo*, this — day of ———, A. D. 18—.

JOSEPH W. HARRIS,
Supervisor of the town of ———.

(1) The section of the constitution here referred to, provides as follows: "In all elections, every white male citizen above the age of twenty-one years, having resided in the state one year next preceding any election, shall be entitled to vote at such election ; and every white male inhabitant of the age aforesaid, who may be a resident of the state at the time of the adoption of this constitution, shall have the right of voting as aforesaid ; but no citizen or inhabitant shall be entitled to vote, except in the district or county in which he shall actually reside at the time of such election.—*Const.*, ART. VI. § 1.

A town meeting, when properly convened at the place appointed at the last annual town meeting, may, by a vote of a majority of the electors present, adjourn to any other part of the town if desired for convenience, and, having again convened pursuant to adjournment, may proceed with the business of the day ; but the vote for such adjournment should not be taken before the hour of ten o'clock in the forenoon at least ; sufficient time ought to be afforded for a full expression of the electors, and in towns where meetings have not usually convened until a later hour, then such vote should not be taken until the arrival of the usual hour of meeting.—*Gould v. Baker*, 8 Cowen, 286. But the meeting could not, of course, adjourn to another day.

In Cook county the annual town meeting is held by special law on the first Tuesday after the first Monday in November. See "LOCAL AND SPECIAL PROVISIONS," DIV. VI., *post*.

²*Form of Notice for Annual Town Meeting.*

ANNUAL TOWN MEETING.

The citizens, legal voters of the town of *Waukegan*, in the county of *Lake* and state of *Illinois*, are hereby notified that the annual town meeting for said town will be held at the town hall, (*state the place where*), in said town, on Tuesday, the — day of April next, being the first Tuesday in said month, for the purposes following:

1. To choose a moderator to preside at said meeting.
2. To elect one supervisor, one town clerk, one assessor, one collector, one overseer of the poor, one commissioner of highways, two constables, two justices of the peace, so many overseers of highways as there are road districts in said town, and so many pound masters as the electors may determine.
3. To (*add any further specific subjects upon which the meeting may be required to act that may be thought proper, and conclude by adding*) and to act upon any additional subjects which may, in pursuance of law, come before said meeting, at the proper time, when convened.

Which meeting will be called to order between the hours of nine and ten o'clock in the forenoon, and be kept open until six o'clock in the afternoon.

Given under my hand at *Waukegan*, this — day of ———, A. D. 18—.

J. M. TRUESDELL, Town Clerk.

NOTE.—The foregoing form, like that given for the first town meeting, *ante*, page 15, no doubt contains more than the law actually requires ; but it is advisable, in giving notices of this kind, to state the general objects of the meeting ; it affords a better understanding beforehand, and calls the attention of those concerned more immediately to the law, by which they are better prepared to act when the appointed time arrives. It is also advisable to state the time, as fixed by law, for convening or calling the meeting to order.

The following is a shorter form, which is suggested as being a substantial compliance with the law in giving notice for the annual town meeting, which may be used when desired :

each town, one supervisor, one town clerk, one assessor, one collector, one overseer of the poor, one commissioner of highways, two constables, two justices of the peace, as many overseers of highways as there are road districts in the town, and so many pound masters as the electors may determine: *provided*, that justices of the peace and constables shall be elected only once in four years, except to fill vacancies; and such justices and constables shall be successors to precinct justices and constables: *provided further*, that any town having eight hundred or more legal voters shall be entitled to elect one additional supervisor, styled assistant supervisor.¹

§ 3. In all towns having a population of more than two thousand inhabitants, it shall be lawful for the qualified voters thereof to elect one justice of the peace and one constable for each and every thousand of its inhabitants, until the population shall reach five thousand, after which the number of justices of the peace and constables shall not be increased.² Said justices of the peace and constables shall be elected in the same manner and shall hold their offices for the same term of time as other justices of the peace and constables. Said justices of the peace shall be commissioned by the governor, and shall have the same jurisdiction, power and authority, and be subject to the same liabilities and shall execute

Additional supervisor. 1861.

Additional justices of peace, and constables. 1854.

Another form of Notice for Annual Town Meeting.

ANNUAL TOWN MEETING.

The citizens, legal voters of the town of *Silver Creek*, in the county of *Stephenson*, and state of Illinois, are hereby notified that the annual town meeting for said town will be held at, (*state the place where*), on the — day of April, A. D. 18—, being the first Tuesday in said month, for the purpose among other things of electing the following officers, (*here enumerate the town officers to be chosen*), and for the transaction of all such other business as may, in pursuance of law, come before such meeting when convened; which meeting will be called to order between the hours of nine and ten o'clock in the forenoon, and be kept open until six o'clock in the afternoon.

Given under my hand at *Silver Creek*, this — day of March, A. D. 18—.

F. D. BULKLEY, Town Clerk.

(1) For powers of assistant supervisors, see ARTICLE 8, Sec. 10, *post*. Several cities and incorporated villages of the state have authority to elect supervisors in addition to those provided by this act. The city of Galena, by charter, amended 1861, is allowed one supervisor for each ward. The city of Waukegan, by charter, 1859, is allowed one supervisor for each ward. The village of Naperville, by special act of 1855, is allowed one supervisor. In the village of Woodstock, McHenry county, by charter, 1852, the president of the board of trustees is by virtue of office, a member of the board of supervisors of the county. The village of Antioch, Lake county, by charter, 1857, is allowed one supervisor. In the village of Palo, Ogle county, the president of the board of trustees is a member of the board of supervisors of the county, by virtue of office; and there may be other cities, villages and towns in the state entitled to additional supervisors, by special law, not here enumerated. See ARTICLE 18th, Sections 3 and 11, *post*, giving to the cities of Chicago and Peoria, one supervisor, in each ward, and to the towns of East and West Galena, each an additional supervisor.

(2) If a town fails or neglects to elect the number of justices or constables, to which it would be entitled under the law, and should elect a less number, having had a full number for the preceding term, this would oust all those of the previous term; neither could hold over on the ground that no one had been elected in his place.—*Platner v. Jones*, 17 Wend., 81. If in a town having three justices and three constables, the electors should at any time see fit to elect only two instead of three, it would oust all those of the preceding year, notwithstanding the number for the preceding year may have been three; neither of them can hold over on the pretence that no one is chosen in his place.—*People v. Jones*, 17 Wend., 81.

bond and be sworn in the same manner as other justices of the peace.

Fence viewers. § 4. The assessor and commissioners of highways, elected in every town, shall, by virtue of their office, be fence viewers of such town.¹

Powers of electors. § 5. The electors of each town shall have power, at their annual town meetings:²

Pounds. 1st. To determine the number of pound masters and the locality of pounds.

Town officers. 2d. To elect such town officers as may be required to be chosen.

Suits. 3d. To direct the institution and defense of suits at law or in equity in all controversies between such town and corporation, individuals or other towns.³

Expense of conducting suits. 4th. To direct such sum to be raised in such town for prosecuting or defending such suits, or for the support and maintenance of roads and bridges, or for any other purpose, as they may deem necessary;⁴ also, to authorize and require the commissioners of highways to assess a road tax on all real estate and personal property liable to taxation in the town, to any amount not exceeding thirty cents on each hundred dollars' worth, as valued on the assessment roll of the previous year.

Roads and bridges. 1854.
Road tax. 1857.
1861.
Exercise powers. 5th. To take measures and give directions for the exercise of their corporate powers.

Canada thistles and weeds. 6th. To make such provisions, by-laws and regulations and allow such rewards for the destruction of Canada thistles or nox-

(1) For powers and duties of fence viewers, see "INCLOSURES AND FENCES," DIV. III. *post*.

(2) The powers of the electors to bind the town are conferred by statute, and are limited to such acts as are prescribed by law.—*Cornell v. Guilford*, 1 Den., 510.

It is held in Massachusetts that a town may indemnify its officers against a liability which they may incur in the *bona fide* discharge of their duties, although it turn out that they have exceeded their legal rights and authority.—*Bancroft v. Lynfield*, 13 Pick., 586.

The electors at town meetings cannot direct an officer of the town to perform any act which by law he has not authority to perform, nor to act in any other manner, in the performance of his duty, than that which is pointed out by law.—*Keen v. Stetson*, 5 Pick., 492.

In Cook county, in the towns of North Chicago, West Chicago, and South Chicago, the powers here given to the electors, are conferred upon the board of town auditors, with assistant and ward supervisors. See "LOCAL AND SPECIAL PROVISIONS," DIV. VII., *post*.

(3) It is held in New Hampshire, that towns have a qualified interest in the roadways and bridges they have erected, and may maintain an action on the case for the destruction or obstruction of the road, or the conversion of the materials.—*Town of Troy v. Cheshire R. R. Co.*, 3 Porter, 88.

Held in Massachusetts that it is competent for the inhabitants of a town to take upon themselves the expense of a suit against their agent or servant in which the interests of the town are directly involved. Where the servants of the town have made mistakes, which have rendered them liable at law, that it is legal and proper for the town to meet the expense.—*Babbitt et al v. Savoy*, 3 Cush., 530.

No action lies against a town for an injury to horses occasioned by the suffering of a public highway to become out of repair, and in a ruinous and unsafe condition; and the electors at town meeting have no authority, and can not, by a majority vote, bind the town by agreeing to pay to the owner his damages he has sustained by such injuries. The town could not be made liable, it seems, without some express statute to that effect. In most of the New England states, such a statute exists.—See *Morey v. Neufane*, 8 Barb., 645; also, 17 Johns., 452.

If, after a vote of the town not to defend an action brought against it, the supervisor or person representing the town, shall nevertheless make a defence, he will not be a competent witness in the action, for he will be bound to indemnify the town against the costs of the defence.—*Emerson v. Newberry*, 13 Pick., 377.

(4) This provision for raising money, was contained in the amendatory act of 1854, and is here re-enacted. It is apprehended however that the electors would not have authority to direct the raising of money for any purpose in which the town was not immediately interested, and directly benefited.—See *People v. Works*, 7 Wend., 486.

ious weeds as they may deem necessary, and to raise money therefor; also to impose such penalties as they may think proper, not exceeding twenty-five dollars for each offence, for a violation of any provisions, by-laws or regulations made as aforesaid.

7th. To establish and maintain pounds at such places within the town as may be deemed necessary and convenient, and discontinue any pounds therein. Pounds established and discontinued. 1861.

8th. To restrain or prohibit the running at large of cattle, horses, mules, asses, hogs, sheep or goats; to authorize the restraining, impounding and sale of the same for penalties incurred and the costs of the proceedings, and to determine the time and manner in which such animals may go at large.¹ Restraining of cattle and other animals. 1861.

9th. To make rules and regulations for ascertaining the sufficiency of all fences in such towns, and to determine what shall be a lawful fence within such town.² Fences. 1857.

10th. To impose such penalties on persons offending against any rule, regulation or by-laws, established by such town, except such as relate to the keeping and maintaining of fences, as they may think proper, not exceeding ten dollars for each offence, unless a different penalty is provided by law, and to remit or refund penalties incurred or paid. Penalties. Except fences. 1861.

11th. To apply all penalties, when collected, in such manner as they may deem most conducive to the interests of the town. Apply penalties.

12th. To make all such by-laws as may be necessary to carry into effect the powers herein granted. Whenever the electors of any town shall determine, at town meeting, to erect one or more pounds therein, the same shall be under the care and direction of such pound masters as shall be chosen or appointed for that purpose. By-laws. Pound master have care of pounds.

§ 6. The sale of animals distrained or impounded, under the provisions herein, shall be conducted as near as may be according to the law regulating sales of property by constables under execution.³ The owner of such animals shall have the right to redeem Sale of animals impounded. 1861.

(1) The rule of the common law, which requires the owner of cattle, horses and other animals, to keep them on his own land, is not in force in Illinois.—*Seeley v. Peters*, 5 *Gilm.*, 130; *Misner v. Lightnell*, 13 *Ills.* 603. Therefore the legislature has given to towns the power to restrain and prohibit such animals from going at large, should they think proper to do so.

There is no general law in Illinois prohibiting such animals as are enumerated in this section from running at large in the highway.—*Seeley v. Peters*, 5 *Gilm.*, 130.

A vote of a town to restrain cattle or other animals from going at large within the limits of the town is binding upon persons not inhabitants, whose animals are found going at large.—*Gilmore v. Holt*, 4 *Pick.*, 253.

Any by-law of a town declaring that all hogs should be kept up, only extends to prevent hogs from going at large on the highway; and it seems that a town has no power to prevent the inhabitants from allowing their own hogs and other animals to go at large upon their own land.—*Seepard v. Hees*, 12 *Johns.*, 433.

(2) In order to maintain an action of trespass for damage done by cattle or other animals, the owner of the close must show that it was protected by a good and sufficient fence.—*Seeley v. Peters*, 5 *Gilm.*, 130; *Misner v. Lightnell* 13 *Ills.*, 74. Or such a fence as the electors of the town had determined to be a lawful fence.

Where, in a field occupied by several persons, there is an inner fence, one of the occupants of the field can not remove such inner fence at pleasure, although he may be the owner thereof, without rendering himself liable to his co-occupant for any damages resulting therefrom. Nor is it any defence to an action of trespass, growing out of the removal of the inner fence, to show that the complaining party was bound to keep the outer fence in repair, or that he might have repaired the same at small expense.—*Buckmaster v. Cool*, 12 *Ills.*, 74.

(3) The law regulating sales of property by constables under execution, provides that the constable "shall appoint a day and hour for the sale of said property, giving ten days' pro-

Redemption.	the same from the purchaser thereof, any time within three months from the date of sale, by paying the amount of the purchaser's bid, with interest thereon at the rate of ten per cent. per annum.
Publication of by-laws. 1861.	§ 7. It shall be the duty of the town clerk to cause all by-laws, rules and regulations of the town, within twenty days after their adoption, to be published by posting in three public places in the town; also, if the town shall so direct, causing the same to be inserted once in a newspaper published in the town, if any there shall be; if not, then in any newspaper published in the county; but all such by-laws, rules and regulations shall take effect and be in force from the date of being adopted, unless otherwise directed by the electors of the town.
Special town meetings. When may be held. 1861.	§ 8. Special town meetings shall be held when the supervisor, town clerk and justice of the peace, or any two of them, together with at least twelve freeholders of the town, shall, in writing, file in the office of the town clerk a statement that a special meeting is necessary to the interest of the town, setting forth the object of the meeting; and the town clerk, or, in case of his absence, the supervisor, shall post up notices in five of the most public places in the town, giving at least ten days' notice of such special town meeting, setting forth the object of the meeting, as contained in the statement filed in his office. Such notice shall likewise be inserted at least once in a newspaper published in the town, if any is published therein. The place of holding special town meetings shall be at the place where the last annual town meeting was held; but in case such place shall be found inconvenient, the meeting may adjourn to the nearest convenient place. ¹
Notice.	
Place of holding meeting.	

vious notice of such sale, by advertisement in writing to be posted up at three of the most public places in the county; and on the day so appointed, the said constable shall sell the property so levied on, or so much thereof as may be necessary to pay the debt, interest and costs, to the highest bidder."—*Rev. Stat.*, 326. *Sec. 79.* The property should be sold by the pound master, in the town, at some convenient public place to be set forth in the notice of sale. The following may be the form of the notice of sale.

Form of Pound Master's Notice of Sale.

POUND MASTER'S SALE.

Notice is hereby given that the undersigned, pound master, for the town of *Magnolia*, in the county of *Putnam*, and state of *Illinois*, by virtue of authority in him vested, will on the — day of — A. D. 18—, at the hour of — o'clock, M. at (*state place*) in said town, offer for sale, and sell to the highest bidder the following described animals, to wit: (*describe the animals particularly*) said animals having been duly distrained and impounded, for a fine of — dollars incurred in consequence of the same running at large in said town contrary to the by-laws thereof. Said animals will be sold as aforesaid in satisfaction of said fine and costs of proceedings.

Dated this — day of — A. D. 18 —.

JOHN SMITH, Pound Master.

¹ *Form of statement to be filed in the office of town clerk, for Special Town Meeting.*

The undersigned, town officers and twelve freeholders of the town of *Wayne*, in the county of *Du Page*, do state that a special town meeting is necessary to the interest of said town for the purpose of (*here set forth the object of the meeting.*)

§ 9. The electors, at special town meetings, when properly convened, shall have power: Power of electors.

1st. To fill vacancies in the office of justices of the peace, and to fill vacancies in the office of constable, or any town officer, where the same shall not have been already filled by appointment. To fill vacancies.
1861.

2d. To provide for raising money for repairing highways or building or repairing bridges, in cases of emergency, and to direct the building or repairing thereof. To raise money
for bridges,
1861.

3d. To act upon any subject within the power of the electors at the annual town meeting, which was postponed at the preceding annual town meeting, to be considered at a future special town meeting, for want of time. But special town meetings shall have no power to act on any subject not embraced in the statement and notice calling the same. To transact un-
finished business.
1861.
Restriction of
power.

We would therefore request that immediate notice be given thereof; and that such meeting be held on the — day of —, A. D. 18—.

Witness our hands this — day of —, A. D. 18—.

LUTHER BARTLETT, Supervisor.

S. W. MOFFATT, Town Clerk.

CHARLES SMITH, } Justices of the Peace.
JOHN GLOSS, }

(NAMES OF 12 OTHERS,) Freeholders of the town.

Form of Notice for holding Special Town Meeting.

SPECIAL TOWN MEETING.

Whereas, the supervisor, town clerk and justices of the peace (or as the case may be) together with twelve freeholders of the town of Wayne, have, in writing, filed in my office a statement that a special town meeting is necessary to the interest of said town, setting forth the object of the meeting,

The inhabitants, legal voters of the said town of Wayne, are therefore hereby notified, that a special town meeting will be held at —, on the — day of —, A. D. 18—, at 9 o'clock in the forenoon; for the purposes following, to wit:

To (here enumerate specifically in proper order the subjects to be acted upon as contained in the statement filed.)

Being the objects contained in the said statement filed in my office.

Given under my hand at Wayne, this — day of — A. D. 18—.

S. W. MOFFATT, Town Clerk.

NOTE. The notice should contain substantially the same objects set forth in the request for the special meeting.

It is held in New York that special town meetings have no jurisdiction to act upon any subject not specially conferred upon such meetings by law. That the powers conferred upon the electors at the annual town meeting can not be extended by implication to special town meetings. *People v. Works*, 7 Wend., 486. By the statute of New York, special town meetings have power, specially given, to supply vacancies in certain cases; to raise moneys for the support of common schools, or the poor, when those subjects were not acted upon at the annual town meeting; and to deliberate in regard to suits for or against the town, and to raise moneys therefor. And it is decided that they have no other power.—See same case before cited. This decision will apply with equal force to our own law. It will be observed however, that special town meetings have authority to act upon any subject within the power of the electors at the annual town meeting where the subject was postponed for the consideration of a special meeting. When it is desired to postpone the consideration of any subject to a subsequent special town meeting, the proposition should be reduced to writing in the form of a resolution or order, and being adopted by the meeting, should be recorded by the clerk upon the minutes of the proceedings of the meeting, that in case of controversy it may be shown with certainty what subjects were postponed or laid over. The policy of postponing subjects for the action of special town meetings should never be adopted unless it becomes absolutely necessary from want of time for action at the annual meeting, or like cause; such a policy must always more or less endanger the rights of individuals, and tend to confusion and dissatisfaction.

Privilege from
arrest.
§1.

§ 10. During the day on which any annual or special town meeting shall be held, every person in the town, entitled to vote at such town meeting, shall be privileged from arrest, in all cases, except treason, felony or breach of the peace.

ARTICLE FIFTH.

OF THE METHOD OF CONDUCTING TOWN MEETINGS.¹

Hour of opening
town meeting.

§ 1. The electors present at any time between the hours of nine and ten (10) o'clock, in the forenoon of the day on which there is an annual or special town meeting, shall be called to order by the town clerk, if there be one. In case there be none, or he is not present, then the voters may elect, by acclamation, one of their number chairman. They shall then proceed to choose one of their number to preside as moderator of such town meeting.²

Chooses modera-
tor.

Oath of office of
moderator.

§ 2. Before the moderator or the presiding officer of any town meeting shall enter upon the duties of his office, he shall take an oath faithfully and impartially to discharge the duties of such office ;

(1) Town meetings here provided for, are conventions or assemblies of the legal voters of the town, forming what is termed deliberative assemblies, for the transaction of certain business, pertaining to their immediate local interests,—exercising certain inherent powers, not delegated to their representatives, each elector appearing and acting for himself, and being accountable to no one for his acts as such. Meetings of this kind are conducted according to certain rules which experience has shown to be fit and necessary for that purpose. The rules necessary in conducting the ordinary business of a town meeting are few and simple, and are such as would occur to the good sense of every man of ordinary intelligence. In disposing of business properly and with dispatch, much depends upon the moderator or presiding officer ; if he thoroughly understands his duties, and performs them properly and promptly, he will greatly facilitate the business of the meeting. The general duties of the presiding officer, as laid down in the books of parliamentary practice, are the following :

To open the sitting, at the time to which the assembly is adjourned, by taking the chair and calling the members to order.

To announce the business before the assembly in the order in which it is to be acted upon.

To receive and submit, in the proper manner, all motions and propositions presented by the members.

To put to vote all questions which are regularly moved, or necessarily arise in the course of the proceedings, and to announce the result.

To restrain the members, when engaged in debate, within the rules of order.

To enforce on all occasions, the observance of order and decorum among members.

To receive all messages and other communications and announce them to the assembly.

To inform the assembly, when necessary, or when referred to for the purpose, in a point of order or practice.

To name the members (when directed to do so in a particular case, or when it is made a part of his general duty by a rule,) who are to serve on committees ; and, in general,

To represent and stand for the assembly, declaring its will, and, in all things, obeying implicitly its commands.—*Cushing's Manual*.

The moderator will find upon examination, that the most important of his duties have been defined by this act.

It is made the duty of the moderator, as will be seen, to regulate the business and proceedings of the meeting. After the meeting is fully organized, by the election and qualification of the proper officers, he should announce that the meeting is organized and ready to proceed to business,—that the first business in order will be the opening of the polls and proceeding to the election of such officers of the town as are to be elected by ballot. At the hour of two o'clock P. M., he should announce that the hour of two o'clock in the afternoon having arrived, the general business of the day, as provided by law, is in order. He should then direct the order in which the various subjects for action shall be taken up, and announce each as it comes up in its order for action.

(2) Should there be a failure to call the town meeting to order within the hour appointed by the law, it could no doubt be called to order at any time before the hour fixed by law for closing.—See *Goodell v. Baker*, 8 *Coven*, 286.

In Cook county the supervisor of the town is moderator of the town meeting, by virtue of office. See "LOCAL AND SPECIAL PROVISIONS," *post*, p. 239.

which oath may be administered by the town clerk or other proper officer.¹

§ 3. The town clerk, last before elected or appointed, shall be the clerk of meeting the clerk of the town meeting, and shall keep faithful minutes of its proceedings;² in which he shall enter, at length, every order or direction and all rules and regulations made by such meeting.³ Clerk of meeting
Minutes of proceedings.

(1) In Cook county the supervisor is moderator. See "LOCAL AND SPECIAL PROVISIONS," Div. VII., *post*, p. 239.

Form of Oath to be administered to Moderator of Town Meeting.

You do solemnly swear (or affirm) that you will faithfully and impartially discharge the duties of moderator at this town meeting; so help you God.

NOTE.—This oath, it will be seen, may be administered by the town clerk or other proper officer. The statute has determined who are empowered to administer oaths, whether oaths of office, or for other purposes. By the Revised Statutes, CHAP. 76, sec. 3, it is enacted, "that all courts of the state, the judges, justices, notaries public and clerks of said courts, within their respective districts, circuits or counties, and the justices of the peace within their counties, shall respectively have power to administer all oaths of office, and other oaths required to be taken by any person before entering upon the discharge of the duties of any office, appointment, place or business, or any other lawful occasion."—See *Purple's Stat.*, p. 786.

What is therefore understood by "other proper officer," is any of the officers enumerated by the section of the statute here quoted.

The clerk should make a record upon the minutes of the meeting, of the fact that the moderator was duly sworn before entering upon the duties of his office.

Where, in pursuance of law, the oath of office is administered to a town officer in open town meeting, in presence of the town clerk, the clerk's record of the fact is competent evidence of the administration of the oath.—*Briggs v. Murdock*, 13 Pick., 305.

The neglect of the moderator or clerk to take the oath as prescribed, would not, it seems, vitiate the election of officers at town meeting. An oath irregularly administered, for example, upon a book other than the Holy Bible—the parties administering it, and taking it, supposing it a Bible, is a valid oath.—*People v. Cook*, 4 Seldon, 67.

(2) One who was formerly a town clerk, but is no longer in the office, can not amend a town record made by him when town clerk; but if he continue in office, he may amend the record of a previous term; the intervening election is held to be substantially a continuance of the clerk in the same office.—*Hartnell v. Littleton*, 13 Pick., 229.

³ *Form of Minutes of Proceedings of Town Meeting.*

At the annual town meeting held in the town of *Batavia*, county of *Kane*, and state of Illinois, at (state place of meeting,) on the — day of —, A. D. 18—, the meeting was called to order by *Frank Crandon*, town clerk. *N. S. Young*, Esq., was, on motion of *Mr. C. H. Brown*, duly chosen to preside as moderator, who being first duly sworn by *A. A. Smith*, Esq., a justice of the peace in said town, entered upon the duties of his office.

The polls for the election of officers were opened, proclamation thereof being first made by the clerk.

At twelve o'clock at noon, on motion of *Mr. —*, the meeting was adjourned and polls closed for one hour, till one o'clock P. M.

At one o'clock P. M., meeting called to order by the moderator, and polls opened, pursuant to adjournment.

The hour of two o'clock in the afternoon having arrived, and the general business of the day being now in order,

On motion of *Mr. H. L. Ford*, it was voted that the polls for the election of officers be kept open till six o'clock P. M.

The following named persons were elected by yeas and nays, overseers of highways for the ensuing year, in the following road districts, to wit, (here give the names of persons and number of districts.)

On motion of *Mr. Jason Chapel*, ordered that a pound for impounding animals be established and erected at (state place where,) within sixty days from this date, not to exceed in cost the sum of — dollars, and that the same be erected and constructed under the direction of the pound master.

Mr. A. W. Bull presented the following resolution, which, on motion, was adopted:

Resolved, That, (Set forth the resolution.)

On motion of *Mr. Spencer Johnson*, ordered that the next annual town meeting be held at (set forth the place ordered.)

Clerk pro tem. § 4. If the town clerk be absent then such person as shall be chosen for that purpose by the electors present shall act as clerk of the meeting.¹

Moderator to regulate business. § 5. The moderator chosen by the electors to preside at the annual or special town meeting shall regulate the business and proceedings thereof, and shall decide all questions of order, and shall make public declaration of all votes passed. When any vote, so declared by him, shall, upon such declaration being questioned by one or more of the electors present, he shall make the vote certain by causing the voters to rise and be counted or by dividing off.

Decision of questions. Questions how decided. § 6. All questions upon motions made at town meetings shall be determined by the majority of the electors voting; and the officer presiding at such meeting shall ascertain and declare the result of the votes upon each question.

Order of business. 1857. § 7. It shall not be lawful for the electors, at the annual town meeting, to commence the transaction of any business, except that which shall pertain to the organization of the meeting and the election of the officers of the town, until the hour of two o'clock

General business commence at two o'clock P. M. in the afternoon; at which hour, or as soon thereafter as the electors present may determine, the general business of the day, which the electors may lawfully transact at town meetings, shall commence, and be continued until such business shall be disposed of; upon the completion of which the moderator shall announce the miscellaneous business of the day to be closed; after which announcement no further business shall be transacted at that meeting, unless the electors shall, at the time of such announcement, as aforesaid, so order, except the election of officers, as aforesaid, or that which appertains thereto; after which no question already disposed of shall be reconsidered, unless the motion for such reconsideration shall be sustained by a number of votes equal to a majority of all the names entered on the poll list, at such meeting, up to the time such motion shall be made.

Reconsideration of motion. 1861.

Disorderly conduct.

§ 8. If any person shall conduct in a disorderly manner, at any town meeting, and, after notice from the moderator, shall persist therein, the moderator may order him to withdraw from the meeting, and, on his refusal, may order a constable or other person to take him from the meeting, and confine him in some convenient place until the meeting shall adjourn; and the person so refusing

(In like manner, set forth each order or direction as they transpire; after which, at the close, set forth the statement of the canvass of votes, as directed by section 22 of this article, *post.*)

On motion, meeting adjourned without day.

FRANK CRANDON, Town Clerk.
N. S. YOUNG, Moderator.

It seems that the clerk's record of the proceedings of a town meeting will be considered sufficient evidence of the facts therein set forth, as transpiring at that meeting.—*Briggs v. Murdock*, 13 Pick., 805.

(1) When it becomes necessary to choose a clerk pro tem., it is proper that he should be sworn, using the form of the oath of moderator; adapting it to the case.

to withdraw shall, for such offence, further forfeit a sum, not exceeding ten dollars, for the use of the town.¹

§ 9. No person shall be a voter at any town meeting, unless he shall be qualified to vote at general elections, and has been for the last thirty days an actual resident of the town wherein he shall offer to vote.² Qualification of voters.

§ 10. If any person offering to vote at any election or upon any question arising at such town meeting shall be challenged as an unqualified voter, the presiding officer shall proceed thereupon in like manner as the judges at the general elections are required, adapting the oath to the circumstances of the town meeting.³ Challenge of voter.

(1) The order of the moderator to take a person from the meeting, for disorderly conduct, need not be in writing, but may be given to the constable, or other person verbally; but if it is desired to recover the forfeiture or penalty provided for, it will be an independent matter, and must be prosecuted as in other cases of fines or penalties going to the town.—*Parsons v. Brainard*, 17 Wend., 522.

(2) By "an act to prevent illegal voting at elections," and "an act to provide for ascertaining the qualification of voters and to prevent illegal voting," the former approved Feb. 21st, and the latter Feb. 22d, 1861, it is provided that to constitute a voter at any election under the laws of this state, except under charters for cities or incorporated towns, the person must have resided in the election district (or township) where the vote is offered, for the term of thirty days immediately preceding the election.—See title "ELECTIONS," Div. II., post p. 128.

(3) For proceedings by judges at general elections, see ELECTIONS, Div. II., p. 124, act approved February 12th, 1849, § 10; also the two acts, one approved February 21st, and the other February 22d, 1861. The oath required at general elections, when adapted to the circumstances of the town meeting, under the acts of the legislature before referred to, will be as follows:

Form of Oath to person challenged.

You do solemnly swear (or affirm as the case may be) that you are a resident of this township, and that you have been an actual resident herein for the last thirty days: that you are a citizen of this state, and have resided herein one year preceding this town meeting; (or that you was an inhabitant of this state on the first day of April, in the year of our Lord one thousand eight hundred and forty-eight;) that you are above the age of twenty-one years, and that you have not voted at this town meeting, so help you God.

By the election laws of 1861, as will be seen, the person challenged is required, in addition to the foregoing oath to swear or affirm to his place of residence, specifying the particular place and house in which he resides, and stating how long he has there resided, and his business or employment; and if he has not resided in such house for thirty days immediately preceding such election, he shall state where and in what house he has resided for the last thirty days, and in addition thereto he is required to produce two witnesses, both personally known to the judges of the election and resident in the precinct, district, or ward, to testify to the qualifications of the person challenged as a voter. The additional oath of the person challenged may be in the following form, followed by appropriate interrogatories;

Form of additional Oath to person challenged.

You do solemnly swear, (or affirm,) that you will fully and truly answer all such questions as shall be put to you touching your place of residence, and qualifications as a voter at this election.

The moderator will then put the following questions:

1st. In what town do you now reside?

2d. In what place and house do you reside? State the same particularly.

3d. How long have you resided in said house, and what is your business or employment?

(If the answer shows that the person has not resided in such town for thirty days immediately preceding the election or town meeting, he must state where and in what house he has resided for the last thirty days.)

The two witnesses produced to prove the residence of the person challenged are required by law to take the following oath, which will be administered to each by the moderator:

- False swearing. § 11. If any person, challenged as unqualified to vote at any town meeting, shall be guilty of willful and corrupt false swearing or affirming, in taking the oath required in the preceding section, such person shall be deemed guilty of willful and corrupt perjury, and punished accordingly.
1861. Punishment.
- Illegal voting. § 12. Any person who shall vote or offer to vote in any town 1861. in which he does not reside, or who shall vote or offer to vote in more than one town, or who shall vote or offer to vote more than once on the same day at any town meeting, or who is not a legal voter, he shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not exceeding one hundred dollars, or imprisoned not exceeding six months, or both by such fine and imprisonment.
- Punishment.
- Adjournment of town meeting and closing of polls. § 13. Town meetings shall be kept open from the time of opening 1854. in the morning until six o'clock in the afternoon, unless the 1861. voters present may, by vote, adjourn one hour, from twelve till one o'clock; and at all town meetings and elections of town officers the polls may be closed at four o'clock in the afternoon, but may be kept open until a later hour, in the discretion of the electors.¹
- Minutes to be filed. § 14. The minutes of the proceedings of every town meeting, subscribed by the clerk of said meeting, and by the presiding officer, shall be filed in the office of the town clerk, within two days after such town meeting.
- Proclamation. § 15. Before the electors shall proceed to elect any town officer, proclamation shall be made of the opening of the polls, by the town clerk; and proclamation shall, in like manner, be made of each adjournment, and of the opening and closing of the polls until the election is ended.²

Form of Oath of Witnesses produced to prove residence of person challenged.

I do solemnly swear, or affirm, (as the case may be,) that I am a resident of this election district, and entitled to vote at this election, and that I have been a resident of this election district for one year last past, and that I am well acquainted with the voter whose vote is now offered, that he is an actual and *bona fide* resident of this election district, and that he has resided in this state for one year last past.

In deciding who are voters at town meeting, two questions are to be determined—first, the person must be a voter at general elections; second, he must also have been for the last thirty days a resident of the town in which he offers to vote. As to who are voters at general elections, see note to section 1, article 4, *ante*, p. 22.

In the absence of any express statute on the subject, it has been decided that a resident is a person coming into a place with intention to establish his domicile or permanent residence, and who, in consequence, actually remains there. Time, however, is not so essential as the intent executed by making or beginning an actual establishment, though it be abandoned in a longer or shorter period. *Bouv. L. Dict.*, title "RESIDENT," 20 *Johns.*, 211. 2 *Scam.*, 377. But our statute has provided, see election laws, *post*, Div. II., approved February 22d, 1861, that to constitute residence under the constitution and election laws of the state, a permanent abode is necessary, and residence in the town or district for sixty days immediately preceding the election.

(1) NOTE. It will be observed that the *polls* of election, only can be closed at four o'clock; the town meeting can not be adjourned until six o'clock.

² *Form of Proclamation of opening Polls at Town Meeting.*

Hear ye: hear ye: hear ye: the polls for the election of officers at this meeting are now opened, pursuant to law.

§ 16. The supervisor, town clerk, assessor, overseer of the poor, collector, commissioners of highways, constables, and justices of the peace, shall be chosen by ballot. All other officers shall be chosen, either by ballot, by yeas and nays, or by dividing the electors, as the electors of the meeting may determine. When the electors vote by ballot all the officers voted for shall be named in one ballot; which shall contain written or printed, or partly written and partly printed, the names of the persons voted for, and the offices to which such persons are intended to be chosen, and shall be delivered to the presiding officer, so folded as to conceal the contents.¹

Mode of choosing officers.
By ballot.

The preparation of ballots.

§ 17. When the election is by ballot a poll list shall be kept by the clerk of the meeting, on which shall be entered the name of each person whose vote shall be received.²

§ 18. When the election is by ballot the presiding officer shall deposit the ballots in a box provided for that purpose.

Deposit of ballots in box.

§ 19. If any moderator shall at any town meeting, before the poll is closed, read or examine, or permit any person to read or examine the names on any voter's ballot, with the view of ascertaining any candidate voted for by him, such moderator shall forfeit, to the use of the town, the sum of twenty-five dollars.

Moderator not to read or expose ballot.

§ 20. At the close of every election by ballot the presiding

Canvassing of the votes.

If the voters present shall vote to adjourn from twelve till one o'clock, proclamation must be made of such adjournment and of the opening again after such adjournment.

Form of Proclamation of adjournment of Polls.

Hear ye: hear ye: hear ye: the polls for the election of officers at this meeting will stand adjourned till one o'clock this afternoon.

Form of opening Polls after adjournment.

Hear ye: hear ye: hear ye: the polls for the election of officers at this meeting are now opened pursuant to adjournment.

NOTE. Although the law does not seem to require it, yet it would be well for the clerk to make proclamation of the closing of the polls thirty minutes before closing the same, as is required by law at general and other elections. The foregoing forms given can be varied to suit the occasion of giving notice of the closing of the polls.

(1) If a ballot contains the names of more persons for any office, than there are candidates to be elected, such part of the ticket can not be counted for either of them, but must be rejected. *Sess. L. 1849, 1st sess., p. 73. People v. Loomis, 8 Wend., 396. But it can not be rejected as to other candidates regularly named on the ballot. Carpenter v. Ely, 4 Wisconsin R., 420.*

But no vote should be rejected for want of form, if it can be determined therefrom, satisfactorily, the persons voted for, and the office which the voter intended to fill. See "ELECTIONS," Div. II., post, act approved Feb. 12, 1849, § 13.

² *Form of Poll List kept at Town Meeting.*

Poll list kept by the clerk, at town meeting held at ——— in the town of Ontario, and county of Knox, on the — day of ———, A. D. 18—, on which is entered the name of each person voting at said town meeting.

No.	NAMES.	No.	NAMES.
1	James Hammond,	3	S. Chapman,
2	E. Hollister,	4	J. W. Crane.

Total number of ballots,

4.

JAMES JACKSON, Moderator.

Attest, WM. J. SAVAGE, Town Clerk.

officer shall proceed publicly to canvass the votes; which canvass, when commenced, shall be continued without adjournment or interruption until the same be completed.

Canvass how conducted.

§ 21. The canvass shall be conducted by taking a ballot at a time from the ballot box and continue counting until the number of ballots are equal to the number of names on the poll list, and if there shall be any left in the box they shall be immediately destroyed; and such persons as shall have the greatest number of votes shall be declared to be elected. If on opening the ballots two or more ballots shall be found to be, so folded that it shall be apparent that the same person voted them, the presiding officer shall destroy such votes immediately.

Statement of result to be entered by clerk.

§ 22. The canvass being completed, a statement of the result shall be entered at length, by the clerk of the meeting, in the minutes of its proceedings, to be kept by him, as before required, which shall be publicly read by him to the meeting; and such reading shall be deemed notice of the result of the election to every person whose name shall be entered on the poll list as a voter.¹

Publicly read

Tie vote. 1831.

In case two or more persons shall have an equal number of votes for the same office the question, of which shall be entitled to the office, shall be decided between such persons, by lot, under the direction of the town clerk; but he shall give each party notice of the time and place of drawing lots.²

Notice.

¹ *Form of Statement of result of Canvass to be entered by Clerk in Minutes of Meeting.*

The following is a statement of the result of the canvass of votes by ballot, for the election of officers at the annual town meeting in the town of *Richmond*, in the county of *McHenry*, state of *Illinois*, A. D. 18—, as publicly canvassed by the presiding officer at said meeting:

Alfred P. Wells had one hundred votes for supervisor.

Heman Gibbs had seventy-five votes for supervisor.

Orrin Hobart had one hundred votes for town clerk.

(And so on, giving a statement of the votes cast for each person.)

² *Form of Notice by Town Clerk, of drawing lots in case of a tie vote between candidates.*

To *Joseph Slocum*.

Sir—You having received at the late town meeting an equal number of votes with *David Kemp*, for the office of supervisor of the town of *Brimfield*, are hereby notified that the question of which of you is entitled to said office, will be decided by lot at my office in said town, on the — day of —, A. D. 18—, at the hour of ten o'clock in the forenoon; that should you fail to appear at such time and place, the matter will be decided in your absence.

Dated at *Brimfield*, this — day of —, A. D. 18—.

JOSEPH BLANCHARD, Town Clerk.

NOTE. Where the candidates are present at the announcement of the tie vote, at town meeting, verbal notice may be given them by the clerk, informally, and the drawing lots take place at once. No method of proceeding is prescribed in deciding the question between candidates, but the drawing is under the direction of the town clerk; he will therefore direct the manner in which to proceed. It would be well for him to adopt the course prescribed in deciding the term of office of commissioners at the first election. See ARTICLE EIGHTEENTH, sections 8 and 9, *post*. He may prepare two pieces of paper, on one may be written the title or name of the office in question, leaving the other blank; then fold each alike and place them in a box, from which let the candidates draw; the person drawing the paper containing the name of the office, to be entitled to it, and declared duly elected. In case the candidates,

§ 23. The clerk of every town meeting, within ten days thereafter, shall transmit to each person elected to any town office, whose name shall not have been entered on the poll list as a voter, a notice of his election.¹

§ 24. The town clerk shall file in the office of the clerk of the county court a list of the names of all town officers elected at the annual town meeting, within twenty days after such election shall be held.

Notice to person elected.

List of town officers to be filed with county clerk. 1854.

ARTICLE SIXTH.

OF QUALIFICATION AND TENURE OF OFFICE.

§ 1. No person shall be eligible to any town office, unless he shall have been one year a resident of such town.²

Eligibility to town office.

§ 2. Every person chosen or appointed to the office of supervisor, town clerk, assessor, overseer of the poor, commissioner of highways, or collector, before he enters upon the duties of his office and within ten days after he shall be notified of his election or appointment, shall take and subscribe, before some justice of the peace, such oath or affirmation of office as is prescribed by law.³

Oath of office. 1861.

Before justice of peace.

§ 3. Such person shall, within eight days thereafter, cause such certificate to be filed in the office of town clerk.

Oath to be filed.

or either of them, fail to attend upon being notified, then the clerk can select some qualified elector to draw for the absent candidate.

It is proper that some record or memorandum should be made, by the town clerk, of the manner of disposing of the question of a tie vote between candidates, that the records of the town may always show who are elected officers. It would therefore be well for the clerk to add a memorandum at the close of the minutes of proceedings of the meeting, after the signatures of himself and the presiding officer, in the following form:

Form of Memorandum of decision of tie vote between Candidates.

At the annual town meeting in the town of —, in the year 18—, A. B. and C. D. having had an equal number of votes for the office of —, the question of which should be entitled to said office was, on the — day of —, 18—, duly decided between them by lot, and it was decided that the said A. B. should be entitled to said office.

E. F., Town Clerk.

¹ *Form of Notice by Town Clerk to any person elected to any town office, whose name is not on the Poll List.*

To Gould G. Norton, Esq., of the town of *Scott*, in the county of *Ogle*:
You are hereby notified that at the annual town meeting, (or special, as the case may be,) held in said town, at —, on the — day of —, A. D. 18—, you were duly elected to the office of *supervisor*.

Given under my hand at *Scott*, this — day of —, A. D. 18—.

O. W. NORTON, Town Clerk.

(2) Town officers must be inhabitants of the town in which they are chosen, and they cease to be officers when they cease to be inhabitants.—*Bane v. Greenwich*, 1 Pick., 129.

³ *Form of Oath to be taken and subscribed by town officer.*

STATE OF ILLINOIS, }
Lake County. } ss.

I, *E. S. Ingalls*, do solemnly swear (or affirm) that I will support the constitution of the United States and of the state of Illinois, and that I will according to the best of my judgment, skill and ability, diligently, faithfully, and impartially perform all the duties enjoined on me as (*here insert the title of the office*) for the town of *Antioch*, in the county of *Lake*, and state of Illinois.

Neglect to take oath, a refusal to serve.

§ 4. If any person chosen or appointed to either or any of the town offices above enumerated shall neglect to take and subscribe such oath and cause the certificate thereof to be filed, as above required, such neglect shall be deemed a refusal to serve.

Notice of acceptance to be filed.

§ 5. Every person chosen or appointed to the office of overseer of highways or pound master, before he enter on the duties of his office and within ten days after he shall have been notified of his election or appointment, shall cause to be filed in the office of town clerk a notice, signifying his acceptance of such office. A

Effect of neglect.

neglect to cause such notice to be filed shall be a refusal to serve.¹

Collector's bond.

§ 6. Every person chosen or appointed to the office of collector, before he enters upon the duties of his office and within eight days after he receives notice of the amount of taxes to be collected by him, shall execute to the supervisor of the town, and his successor in office, and lodge with him a bond, with one or more securities, to be approved by such supervisor, in double the amount of such taxes, conditioned for the faithful execution of his duties as such collector.²

To be approved by supervisor.

I do solemnly swear (*or affirm as the case may be*) that I have not fought a duel, nor sent or accepted a challenge to fight a duel, the probable issue of which might have been the death of either party, nor been a second to either party, nor in any manner aided or assisted in such duel, nor been knowingly the bearer of such challenge or acceptance since the adoption of the constitution; and that I will not be so engaged or concerned directly or indirectly, in or about any such duel during my continuance in office, so help me God.

E. S. INGALLS.

Taken and subscribed before me, this }

—day of—, A. D., 18—.

R. B. SIMMONS, *Justice of the Peace.*

NOTE.—For oath of assessor, see act approved Feb. 12, 1853, §25, *post*. Also Const., Art. 3, §30. Supervisors are required, See ART. 14, Sec. 4, to lay before the board of supervisors at their first meeting after the annual town election, certificates of their election; each supervisor will, therefore, after his qualification be entitled to a certificate of his election, which should be issued by the town clerk, and may be in the following form.

Form of Supervisor's certificate of election.

Stephenson County, }
Town of Freeport, } ss.

I, *John Geigar*, town clerk of said town of *Freeport*, do hereby certify that at the annual town meeting in said town, on the—day of—, A. D., 18—, *W. H. Rhodes* was duly elected supervisor of said town, (*or*, was on the—day of—, A. D., 18—, duly appointed, &c.,) that he has been duly qualified as such by taking the oath of office and giving bond as required by law.

In witness whereof, I have hereunto set my hand this—day of—, A. D., 18—.

JOHN GEIGAR, Town Clerk.

¹*Form of Notice of acceptance of Overseer of highways or pound master.*

To *S. L. Emery*, town clerk of the town of *Avon*:

Sir:—Having been elected (*or appointed*) overseer of highways for district No. —, in said town, (*or pound master for said town as the case may be*) on the—day of —, A. D., 18—, I hereby notify you that I accept the office.

Witness my hand, this — day of —, A. D. 18—.

CHURCHILL EDWARDS.

²*Form of Collector's Bond.*

Know all men by these presents, that we, *William Joiner*, of the town of

§ 7. The supervisor shall, within six days thereafter, file such bond, with his approval indorsed thereon, in the office of the recorder, who shall make an entry thereof in a book to be provided for the purpose, in the same manner in which judgments are recorded; and every such bond shall be a lien on all the real estate, severally, of such collector, within the county at the time of the filing thereof, and shall continue to be such lien until its conditions, together with all costs and charges which may accrue by the prosecution thereof, shall be fully satisfied; and all actions against the sureties on any collector's bond shall be commenced within two years from the date of the execution thereof, and not afterwards: *provided*, that actions upon existing bonds shall be commenced within six months from the date of the passage of this act and not afterwards.¹

Bond to be filed and recorded.

Shall be a lien on property.

Limitation of actions on.

1861.

§ 8. In any town in which there shall be no town supervisor, the collector of the town may make his official bond to the clerk of the county court of the county in which said town may be situated.

Collector's bond when made to county clerk.

1857.

§ 9. Every person chosen or appointed to the office of constable, before he enters upon the duties of his office, and within eight days after he shall be notified of his election or appointment, shall take and subscribe, before some justice of the peace of the county,

Constable's oath of office.

1861.

Pine Creek, in the county of *Ogle*, in the state of Illinois, as principal, and *John W. Price* and *David F. Miller*, of the said county and state, as sureties, are held and firmly bound unto *S. Ruggles*, supervisor of said town of *Pine Creek*, and to his successor in office, in the penal sum of (*double the amount of taxes*) for the payment of which, well and truly to be made, we bind ourselves, our heirs, or executors and administrators, firmly by these presents. Sealed with our seals, and dated this — day of —, A. D. 18—.

The condition of the above obligation is such, that, whereas, the above bounden *William Joiner* has been elected (*or appointed*) collector for the said town of *Pine Creek* for the current year, and has accepted the office, and is about taking upon himself the discharge of his duties.

Now therefore, if the said *William Joiner* shall, as such collector, faithfully collect, account for, and pay over all taxes which he should be legally required to collect, and also shall with diligence and fidelity execute and discharge all his duties as such collector, then the above obligation to be void, otherwise to remain in full force and effect.

WM. JOINER, [SEAL.]
JOHN W. PRICE, [SEAL.]
DAVID F. MILLER, [SEAL.]

It has been held in the state of New York, under a like provision of law, that the successor of a supervisor who has taken a collector's bond under the statute, may sue upon it in his own name.—*Jansan v. Ostrander*, 1 Cow., 670.

Form of Supervisor's approval to be endorsed upon Collector's bond.

I hereby approve the within bond.

Witness my hand this — day of —, A. D. 18—.

S. RUGGLES,

Supervisor of the town of *Pine Creek*.

(1) No recovery can be had on a town collector's bond until after a warrant has been issued to the sheriff requiring the delinquent sum to be levied on the property of the collector.—*Marks v. Butler*, 24 Ills., 567.

- Constable bond. the oath of office prescribed by law, and shall execute, in the presence of the supervisor or town clerk of the town, with one or more
- Approval. sureties, to be approved of by such supervisor or town clerk, an instrument, in writing, [in] which such constable and his sureties shall jointly and severally agree to pay to each and every person who may be entitled thereto, all such sums of money as the said
- Condition. constable may become liable to pay on account of any executions
1861. which shall be delivered to him for collection by virtue of his office, and all such damages as each and every person may sustain by reason of any malfeasance, misfeasance or nonperformance of duty on the part of said constable.¹
- Approval to be indorsed. § 10. The supervisor or town clerk shall, if approved, indorse such approval on such instrument, which shall be his approval of the sureties therein named, and then shall cause the same to be filed in the office of the town clerk; and a copy of such instrument, certified by the town clerk, shall be presumptive evidence in all courts of the execution thereof by such constable and his sureties.
- Bond to be filed. § 11. All actions against a constable or his sureties upon such instrument shall be prosecuted within two years after the expiration of the term for which the constable named therein shall have been elected or appointed.
- Copy evidence.
- Limitation of actions upon constable's bond. 1861.

¹*Form of Constable's Oath of office.*

STATE OF ILLINOIS, }
Lake County, } ss.

I, *Parnell Munson*, do solemnly swear (or affirm) that I will support the constitution of the United States and of the state of Illinois, and that I will faithfully perform the duties of the office of constable within and for the county of *Lake*, in the state of Illinois, according to law and to the best of my understanding.

I do solemnly swear (or affirm as the case may be) that I have not fought a duel nor sent or accepted a challenge to fight a duel, the probable issue of which might have been the death of either party, nor been a second to either party, nor in any manner aided or assisted in such duel, nor been knowingly the bearer of such challenge or acceptance since the adoption of the constitution; and that I will not be so engaged or concerned directly or indirectly, in or about any such duel during my continuance in office, so help me God.

PARNELL MUNSON.

Taken and subscribed before me, this }

— day of —, A. D., 18—.

ISAAC L. CLARK, Justice of the Peace.

NOTE. The foregoing is the form of oath of office of constable as prescribed by law, which is gathered from the State Constitution, Art. III, § 30, and Art. XIII, § 26, and Revised Statutes, chapter 59, § 9.

Form of Instrument to be executed by Constable and sureties for performance of duties.

Whereas, the undersigned *Frederick Miller*, was, on the — day of —, A. D., 18—, duly elected (or appointed) a constable for the town of *Compton*, in the county of *Kane*, and state of Illinois, and has accepted of said office and is about to enter upon the performance of the duties thereof.

Now therefore, know all men by these presents, that we, the said *Frederick Miller* as principal, and *Spaulding Eddy* and *S. S. Chaffy* as his sureties, jointly and severally agree to pay to each and every person who may be entitled thereto, all such sums of money as the said constable may become liable

§ 12. If any person chosen or appointed to the office of collector or constable, shall not give such security and take such oath as is required above, within the time limited for that purpose, such neglect shall be deemed a refusal to serve. Neglect of collector or constable to serve.

§ 13. If any person chosen or appointed to the office of supervisor, town clerk, assessor, commissioners of highways, or overseer of the poor, shall refuse to serve, he shall forfeit to the town the sum of twenty-five dollars.¹ Forfeiture for refusal to serve.

§ 14. If any person chosen or appointed to the office of overseer of highways or pound master shall refuse to serve, he shall forfeit to the town ten dollars. Same.

§ 15. If any town officer, who is required by law to take the oath of office, shall enter upon the duties of his office before he shall have taken such oath, he shall forfeit to the town the sum of fifty dollars. Intrusion into office. Penalty.

§ 16. Town officers, except justices of the peace and constables, shall hold their office for one year and until others are chosen or appointed in their places and are qualified. The justices of the peace and constables shall hold their offices for four years or until others are chosen and qualified. Term of office.

§ 17. Whenever the term of any supervisor, town clerk, commissioner of highways, or overseer of the poor shall expire, and other persons shall be elected or appointed to such office, it shall be the duty of such successor or successors, immediately after he or they shall have entered on the duties of the office, to demand of his or their predecessor all the books and papers under his or their control, belonging to such office. Successor to demand books and papers.

to pay on account of any executions which shall be delivered to him for collection by virtue of his office, and all such damages as each and every person may sustain by reason of any malfeasance, misfeasance, or non-performance of duty on the part of said constable.

Executed in the presence of

J. W. SEATON,
Supervisor of the town of Compton.

EREDERICK MILLER, [SEAL.]
SPAULDING EDDY, [SEAL.]
S. S. CHAFFY, [SEAL.]

Form of Supervisor's (or town clerk) approval to be endorsed upon instrument of Constable and sureties.

I hereby approve the within instrument and the sureties therein named.

Witness my hand this — day of —, A. D. 18—.

J. W. SEATON,
Supervisor of the town of Compton.

No particular form for a constable's bond seems to be necessary; it will be sufficient if it contain the substance of the statute. It may be in the form of an agreement or in that of a bond, and unnecessary recitals will not vitiate it, but will be mere surplusage. Neither the constable nor his sureties can object that it is not under seal, nor that the sureties had not been approved by the town clerk or supervisor.—*Skellinger v. Yandes*, 12 Wend., 306.

(1) A person who has been chosen or appointed to a town office, and neglects or refuses to serve, whereby he incurs the penalty imposed by law, he cannot be again chosen or appointed to such office, or made liable to a second penalty for the second refusal to act.—*Haywood v. Wheeler*, 11 Johns., 432.

It is held that an action for the penalty here imposed will not lie except where the town proceed to a new election. That merely neglecting to file notice of the acceptance with the town clerk is not sufficient; the object of the law being to enforce the performance of the duties, and if the town proceed to a new election, then to exact the penalty.—*Winnegar v. Rae*, 1 Cow., 253.

Demand upon person having charge of books.

§ 18. Whenever either of the officers above named shall resign or the office become vacant, in any way, and another person shall be elected or appointed in his stead, the person so elected or appointed shall make such demand of his predecessor [or] of any person having charge of such books and papers.

Delivery of records, books and papers on oath.

§ 19. It shall be the duty of every person, so going out of office, whenever thereto required, pursuant to the foregoing provisions, to deliver, upon oath, all the records, books and papers in his possession or in his control, belonging to the office held by him; which oath may be administered by the officer to whom such delivery shall be made. It shall also be the duty of every supervisor, commissioner of the highways, and overseer of the poor, so going out of office, at the same time to pay over to such successor the balance of moneys remaining in his hands, as ascertained by the auditors of town accounts.¹

The death of persons in office.

§ 20. Upon the death of any of the officers enumerated the successor of such officer shall make such demand, as above provided, of the executors or administrators of such deceased officer;

Duty of executors or administrators.

and it shall be the duty of such executors or administrators to deliver, upon the like oath, all records, books and papers, in their possession or under their control, belonging to the office held by their testator or intestate.

ARTICLE SEVENTH.

VACANCIES IN TOWN OFFICES AND THE MANNER OF FILLING THEM.

Vacancies in town office.

§ 1. Whenever any town shall fail to elect the proper number of town officers, to which such town may be entitled by law, or when any person elected to any town office shall fail to qualify as such, or whenever any vacancy shall happen in any town office, from death, resignation, removal from the town, or other cause, it shall be lawful for the justices of the peace of the town, together with the supervisor and town clerk, to fill the vacancy or vacancies occasioned or occurring in consequence of either or any of the causes above specified, by appointment, by warrant, under their hands and seals; and the persons so appointed shall hold their respective offices during the unexpired term of the persons in whose stead they have been appointed and until others are chosen or appointed in their places, and shall have the same powers and be subject to the same duties and penalties as if they had been duly chosen by the electors.²

Manner of filling 1857.
Warrant of appointment. 1861.

¹Form of Oath to be administered to Supervisor and other town officers on going out of office.

You do solemnly swear (or affirm) that you have delivered to A. B. (*name of successor in office*) all the records, books and papers in your possession or in your control, belonging to the office of supervisor for the town of—, so help you God.

(2) After the appointment of any person to a town office to fill a vacancy, the electors cannot hold a special town meeting and fill such vacancy by election; the person appointed will

§ 2. Whenever a vacancy shall occur, from any cause, in any office or either of the offices enumerated in the foregoing section as composing the board of appointment for the appointing of town officers, in case of vacancy, it shall be lawful for the remaining officers of such appointing board to fill any vacancy or vacancies thus occurring, except in cases of vacancy in the office of justice of the peace, which shall be filled only by election.

Appointment to fill vacancy in appointing board.

Justices shall be elected. 1861.

§ 3. When any appointment shall be made, as provided in the two preceding sections, the officers making the same shall cause the warrant of appointment to be forthwith filed in the office of the town clerk, who shall forthwith give notice to each person appointed.

Warrant to be filed.

Notice of appointment.

Resignation of Justices in accept. 1861.

§ 4. The justices of the peace of a town may, for sufficient cause shown to them, accept the resignation of any town officer of their town; and whenever they shall accept any such resignation they shall forthwith give such notice thereof to the town clerk of the town: *provided*, that in towns having more than two justices of the peace such resignation may be accepted by any two of them.¹

hold over until the expiration of the time for which his predecessor was elected.—*People v. Van Horne*, 18 Wend., 515.

Form of warrant of appointment by Justices of the Peace, Supervisor and Town Clerk, to fill vacancy.

To *Robt. Hasson*, Esq., of the town of *Pleasant Valley*, in the county of *Jo Daviess*, and state of Illinois, greeting:

Whereas, at the annual town meeting of said town, held on the — day of April, A. D. 18—, said town neglected to choose a (*here insert the title of the office vacant*) for the current year, (*or as the case may be*), whereby said office has become vacant.

Therefore, we reposing full confidence in your integrity and ability, have appointed and do hereby appoint you a (*here insert the title of the office*) for said town, to hold said office until some other person shall be chosen or appointed in your stead; and you will have the same powers, and be subject to the same duties and penalties as if you had been duly chosen by the electors of said town.

In witness whereof, we have hereunto subscribed our names and affixed our seals at *Pleasant Valley*, this — day of —, A. D. 18—.

JAMES PARKINSON, Justice of the Peace.

[SEAL.]

WM. S. WILLIAMS, Justice of the Peace.

[SEAL.]

JOHN CRUMMER, Supervisor.

[SEAL.]

THOS. W. GLASSPOOLE, Town Clerk.

[SEAL.]

Form of notice by Town Clerk to one appointed to fill vacancy.

To *Robt. Hasson*, Esq., of the town of *Pleasant Valley*, in the county of *Jo Daviess*, and state of Illinois:

You are hereby notified that on the — day of —, A. D. 18—, *James Parkinson*, *William S. Williams*, *John Crummer*, and *Thomas W. Glasspoole*, justices of the peace, supervisor and town clerk of said town, by their warrant of that date under their hands and seals, appointed you to the office of (*here insert the title of the office*) for said town, which warrant has been duly filed in my office.

Given under my hand this — day of —, A. D. 18—.

THOS. W. GLASSPOOLE, Town Clerk.

¹*Form of resignation of Town Officer.*

To *Galen Barstow* and *G. F. Norton*, Esqs., justices of the peace of the town of *Lisbon*, in the county of *Kendall*, and state of Illinois:

ARTICLE EIGHTH.

OF SUPERVISOR AND HIS DUTIES.*

Supervisor to
receive all
moneys.
To give bond.
1861.

Suit upon.

Supervisor to
prosecute for
penalties.

§ 1. The supervisor of each town shall receive and pay over all moneys raised therein for defraying town charges, except those raised for the support of highways and bridges. Said supervisor shall give bond to the town, with one or more sureties, conditioned for the faithful discharge of his duties in relation to the town revenue—such bond to be approved by the town clerk and filed in his office, with such approval indorsed thereon.¹ Whenever the town clerk shall ascertain that such bond has been forfeited he shall institute suit, in the name and for the use of the inhabitants of the town, against such supervisor.

§ 2. He shall prosecute, in the name of his town or otherwise, as may be necessary, for all penalties of fifty dollars and under, given by law to such town, or for its use, and for which no other officer is specially directed to prosecute. And no person shall be

By reason of (*here state the cause of resignation*) I hereby resign the office of commissioner of highways for said town, (*or as the case may be*) and respectfully ask that you may accept my resignation.

JOHN BOYER.

Dated at *Lisbon*, this — day of —, A. D. 18—.

We, the undersigned, justices of the peace of the said town of *Lisbon*, being satisfied of the sufficiency of the case shown above, do accept of the resignation of the said *John Boyer*.

Witness our hands this — day of —, 18—.

GALEN BARSTOW, }
G. F. Norton, } Justices of the Peace.

¹*Form of Supervisor's bond.*

Know all men by these presents, that we, *John Gage*, of the town of *Avon*, in the county of *Lake*, and state of *Illinois*, as principal, and *George A. Drury*, and *John Fay*, of the said county and state, as sureties, are held and firmly bound unto the said town of *Avon*, for the use of the inhabitants of said town, in the sum of (*here insert such amount as the town clerk may think proper*), for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, and each of them, jointly, severally and firmly by these presents. Sealed with our seals, and dated this — day of — A. D. 18—.

The condition of the above obligation is such, that whereas, the above bounden *John Gage* has been chosen supervisor of the said town of *Avon* for the current year. Now, therefore, if the said *John Gage* shall faithfully discharge all the duties of his said office required of him by law, in relation to the town revenue, then the above obligation to be void and of no effect, otherwise to remain in full force and effect.

JOHN GAGE, [SEAL.]
GEO. A. DRURY, [SEAL.]
JOHN FAY, [SEAL.]

Form of Clerk's approval to be endorsed on Supervisor's bond.

I approve the within bond, this — day of — A. D. 18—.

STEPHEN W. MARVIN, Town Clerk.

*See Board of Health Act, Appendix, p. 271.

disqualified from being a witness or juror in such suit by reason of his being an inhabitant of said town.¹ Witnesses and jurors.

§ 3. He shall keep a just and true account of the receipts and expenditures of all moneys which shall come into his hands, by virtue of his office, in a book to be provided for that purpose at the expense of the town; and said books to be delivered to his successors in office.² Account of receipts and expenditures.

§ 4. On Tuesday preceding the annual town meeting he shall account with the justices of the peace and town clerk of the town, or a majority of them, for the disbursement of all moneys received by him in his official capacity. Accounting with the justices.

§ 5. At every such accounting the justices and town clerk, or a majority of them, shall enter a certificate in the supervisor's office book of accounts, showing the state of his accounts at the date of the certificate.³ Certificate to be entered.

§ 6. The supervisor of each town shall attend the annual meeting of the board of supervisors of the county and at every adjourned or special meeting of said board of which he shall have notice. Attend meetings of the board.

§ 7. He shall receive all accounts which may be presented to him against the town, and shall lay them before the board of town auditors, at or before their annual meeting. Accounts against the town.

(1) A supervisor of a town in discharging his duties as such, acts not in his natural, but in his official capacity; and is *pro tanto* a corporation. He has capacity of suing and being sued so far as his trust is concerned.

The right to sue is incident to his office, and passes to his successor.

If, in a suit brought by or against a supervisor as such, he fails in his action, execution goes against him personally, and his remedy is against the town. So held in New York.—*Jansen v. Ostrander*, 1 Cow., 670.

²Form of keeping Supervisor's book.

M. L. Dunlap, supervisor of the town of *Leyden*, in account with said town.

DR.				CR.			
DATE.		DOLLS.	CTS.	DATE.		DOLLS.	CTS.
1855 Feb'y 1	To am't rec'd of collector of the town.	150	50	1855 Jan'y 1	By am't paid for supervisor's book	1	
				April 1	" am't paid Frederick Brooks, for services as town auditor,	1	

³Form of Certificate of Justices of the Peace and Town Clerk, to be entered in Supervisor's book upon examination of his accounts.

Cook County, }
Town of *Leyden*, } ss.

We, the undersigned, the justices of the peace and town clerk of the said town of *Leyden* do hereby certify that we have this day examined the foregoing account (the certificate being entered at the close of the account at every such accounting) of *M. L. Dunlap*, supervisor of said town, and that we find the same in all respects correct and true, and that there appears at this date to be a balance of ——— dollars and ——— cents in the hands of said supervisor.

Witness our hands this — day of March, A. D. 18—.

W. DRAPER, }
HENRY LOVETT, } Justices of the Peace.
FREDERICK BROOKS, Town Clerk.

- Copies of entries. § 8. He shall lay before the board of supervisors such copies of entries concerning moneys to be raised in his town as shall be delivered to him by the town clerk.
- Neglect of duty. § 9. If any supervisor shall refuse or shall willfully neglect to perform any of the duties of his office, contained in the preceding section, he shall forfeit to the town the sum of fifty dollars, and be disqualified to act as the supervisor of said town.
- Forfeiture. § 10. Assistant supervisors and supervisors of wards in cities shall have no powers or duties as town officers, but shall be members of the board of supervisors of their respective counties, and shall have, possess and enjoy all the rights, powers and privileges of such members.
- Assistant supervisors. Powers and duties. 1861.

ARTICLE NINTH.

OF TOWN CLERK AND HIS DUTIES.*

- Clerks have custody of records. § 1. The town clerk of each town in this state shall have the custody of all records, books and papers of the town, and he shall duly file all certificates of oaths and other papers required by law to be filed in his office.¹
- Shall transcribe minutes. § 2. He shall transcribe in the book of records of his town the minutes of the proceedings of every town meeting held therein, and he shall enter in his book every order or direction and all rules and regulations by any such town meeting.
- To deliver copies of entries of votes for raising money. § 3. He shall deliver to the supervisor, before the annual meeting of the board of supervisors of the county, in each year, certified copies of all entries of votes for raising money, made since the last meeting of the board of supervisors, and recorded the same in the town book.²
- To return names of justices and constables. 1861. § 4. The town clerk, immediately after the election of justice of the peace or the qualifying of any constable, elected or appointed in their respective towns, shall return to the county clerk of their respective counties the names of such justices and constables.
- Penalty for neglect. § 5. If any town clerk shall willfully omit to make such return

(1) It is competent for one chosen town clerk to make a record of his own election and qualification.—*Briggs v. Murdock*, 13 *Pick.*, 305.

When the town clerk files a paper in his office, he should make an entry thereof upon it, with the date of filing in the following form :

Form of entry of filing paper by Town Clerk.

Filed this — day of —, A. D. 18—.

JOHN JACKSON, Town Clerk.

²*Form of Certificate of Town Clerk to accompany Books of Entries of Voters for raising Money, recorded in Town Book.*

Peoria County, }
Town of Peoria, } ss.

I do hereby certify, that the foregoing are true copies of entries of votes for raising money made since the last meeting of the board of supervisors, and recorded in the town book.

Witness my hand this — day of —, A. D. 18—.

W. LOUCKS, Town Clerk of said town.

*See Board of Health Act, Appendix, p. 271.

such omission is hereby declared to be a misdemeanor, and, on conviction thereof, the person so offending shall be adjudged to pay a fine, not exceeding ten dollars.

§ 6. Copies of all papers, duly filed in the office of the town clerk, and transcripts from the book of records, certified by him, shall be evidence in all courts, in like manner as if the originals were produced.¹

Clerk's certificate to papers, evidence.

ARTICLE TENTH.

OF THE BOARD OF AUDITORS OF TOWN ACCOUNTS.*

§ 1. In each town the supervisor, town clerk and justices of the peace of the town shall constitute a board of auditors, to examine the accounts of the overseers of the poor and the commissioners of highways for such town, for moneys received and disbursed by them.²

Town auditors.

Examination of accounts.

§ 2. In case of the absence of any or either of said officers, or their failure to attend any meeting of the board, those attending may associate with them the collector or assessor of the town, or both, in place of any absentee or absentees, as the case may be, who shall act, for the time being, as members of such board.

Vacancy filled in case of absence. 1861.

§ 3. The board of auditors of town accounts shall meet at the town clerk's office, for the purpose of examining and auditing the town accounts, semi-annually, in their respective towns, on the Tuesday next preceding the annual meeting of the board of supervisors, and on the Tuesday next preceding the annual [town] meeting, and such other times as the interests of the town may require.

Time of meetings of the town auditors. 1854.

§ 4. The accounts so audited and those rejected, if any, shall be delivered, with the certificate of the auditors, or a majority of them, to the town clerk, to be by him kept on file, for the inspection of any of the inhabitants of the town. They shall also be produced by the town clerk at the next annual meeting and shall be there read by him.³

Accounts audited filed with the clerk. 1861.

¹Form of Certificate of Town Clerk to copies of Papers and Records.

La Salle County, }
Town of Vermillion, } ss.

I, J. M. Leonard, town clerk of said town of Vermillion, do hereby certify, that the foregoing (or within) is a true and correct copy of the original thereof on file in my office, (or is a true and correct transcript from the original book of records of said town, wherein is contained the entry or record of all such matters.)

In witness whereof, I have hereunto set my hand and seal this — day of —, A. D. 18—.

J. M. LEONARD, Town Clerk. {SEAL.}

(2) When all the officers constituting the board of town auditors have met, a majority of them may decide upon questions coming before them, and their certificate will be valid although the supervisor has refused to sign it.—*Onderdonk v. Supervisors*, 1 Hill, 195.

³Form of Certificate of Town Auditors, to be delivered with accounts audited.

Lee County, }
Town of Bradford, } ss.

We, the undersigned, composing the board of town auditors of said town,

*See Board of Health Act, Appendix, p. 272.

Shall audit charges and claims.

§ 5. The board of auditors, composed of the same officers then in office, shall at the same time and place as stated in section two, [three] examine and audit all charges and claims against their respective towns and the compensation of all town officers, except supervisors, for county services.

Accounts verified by affidavit, when required. 1861.

§ 6. The board of auditors may require accounts presented to be verified by affidavit, setting forth that the same is correct and just and is unpaid, or, if any part thereof has been paid, setting forth how much.¹

Shall make certificate of their doings.

§ 7. The said board shall make a certificate, to be signed by a majority of said board, specifying the nature of the claim or demand, and to whom the amount is allowed, and shall cause said

do hereby certify, that we have this day examined the accounts of *Samuel Crawford*, overseer of the poor, and of *Edwin W. Starks*, *James Thomas* and *Edwin W. Pomeroy*, commissioners of highways for said town, presented by them to us, for monies received and disbursed by them; and that we have audited and allowed to the said *Samuel Crawford*, the sum of *twenty* dollars and *fifty* cents for his services and disbursements necessarily made by him up to this date, in the execution of his duties as overseer of the poor, and that we find a balance of *ten* dollars and *fifty* cents to be due to him in said town. That we have audited and allowed to the said *Edwin W. Starks*, *James Thomas* and *Edwin W. Pomeroy*, the sum of — dollars and — cents, each for their services and disbursements necessarily made by them up to this date, in the execution of their duties as commissioners of highways, and that we find a balance of — dollars and — cents, in the hands of their treasurer, and due to the town.

Witness our hands this — day of — A. D. 18—.

SETH H. WHITMORE, Supervisor.

THOMAS S. HURLBUT, Town Clerk.

TIMOTHY L. MINOR, } Justices of the Peace.

ELISHA PRATT, }

It is held, *Supervisor's v. Ottawa*, 12 Ills., 480, that the board of supervisors in such counties as have adopted township organization are required to provide for the support of the paupers of the county, and that there is no foundation for a distinction between county and town paupers. The section of this act, therefore, providing for the account of overseer of the poor will not apply except in those counties where by special enactment the town support their own poor.

¹Form of Bill against town and Affidavit of correctness.

Town of *Elm Grove*,

To *A. J. Davis*, Dr.

1861. April 8. To services as supervisor, one day, out of town in attending to prosecution of suit in favor of said town against C. D., pending in the *Tazewell* county circuit court,

\$1.50

A. J. DAVIS.

STATE OF ILLINOIS, }
Tazewell County, } ss.

A. J. Davis being duly sworn doth depose and say, that the foregoing (or annexed) bill for one dollar and fifty cents by him rendered against the town of *Elm Grove*, in said county, for services rendered as therein stated, is correct and just, and is unpaid.

A. J. DAVIS.

Subscribed and sworn to before me this }

— day of —, A. D. 18—.

JOHN DILLON, Justice of the Peace. }

NOTE.—Where any part of a bill has previously been allowed and paid, credit therefor should be given on the bill, and the fact stated in the affidavit.

certificate to be delivered to the town clerk of said town, to be by him kept on file, for the inspection of any of the inhabitants of said town; and the aggregate amount shall be delivered to the supervisor, to be by him laid before the board of supervisors, at their annual meeting. The board of supervisors shall cause the amount of said charges to be levied upon the property of said town, and collected as other taxes are levied and collected. The claims and compensation audited and allowed shall be read to the electors, at the next annual [town] meeting, as directed in section four of this article.¹

Amount to be levied.
To be read at town meeting.

§ 8. The following shall be deemed town charges:

Town charges.

1st. The compensation of town officers, for services rendered their respective towns.

2d. Contingent expenses, necessarily incurred, for the use and benefit of the town.

3d. The moneys authorized to be raised by the vote of a town meeting, for any town purposes; and,

4th. Every sum directed by law to be raised for any town purposes.

§ 9. The moneys necessary to defray the town charges of each town shall be levied on the taxable property in such town, in the manner prescribed in the act for raising revenue and other moneys for state and county purposes and expenses.

Town charges to be levied.

ARTICLE ELEVENTH.

OF THE COMPENSATION OF TOWN OFFICERS.

§ 1. The following town officers shall be entitled to compensation, at the following rates for each day necessarily devoted by them to the service of the town, in the duties of their respective offices.

§ 2. The town clerk, supervisor, overseer of the poor and commissioners of highways, shall receive for their services one dollar and fifty cents per day, when attending to town business out of town;—one dollar for town business in their town: *provided*, that the town clerk shall receive fees for the following, and not a per diem: For serving notices of election upon town officers, as required by law, twenty-five cents each; for filing any paper required by law to be filed in his office, ten cents each; for posting up notices required by law, twenty-five cents each; for recording any order or instrument of writing, authorized by law, six cents for each one hundred words; for copying any record in his office

Compensation of town officers.
Town clerk.
Supervisor.
Overseers of poor.
Commissioners of highways.

Clerk's fees for services and copies
1861

¹Form of Certificate of Auditors allowing claims against a town with nature of demand, and to whom the amount is allowed.

Lee County, }
Town of Bradford, } ss.

We, the undersigned, composing the board of town auditors of the said town of Bradford, do hereby certify that the following is the nature of the

Assessor.

1854

Pound master's
fees.Town auditor's
fees.

1861.

No fees for oath
of office.

1861.

and certifying to the same, six cents for every one hundred words, to be paid by the person applying for the same; for copying by-laws for posting or publication, four cents each one hundred words, to be paid for by the town. The town assessor shall receive, for his services as assessor, one dollar and fifty cents per day.

§ 3. The pound master shall be allowed the following fees for his services, to wit: For taking into the pound and discharging therefrom, every horse, ass or mule, and all neat cattle, ten cents each; for every sheep or lamb, three cents each; and for every hog, large or small, five cents.

§ 4. The officers composing the board of appointment in case of vacancy, when they shall meet for that purpose, and the officers composing the board of town auditors, shall each be entitled to one dollar a day for their services.

§ 5. No justice of the peace or town officer shall be entitled to any fee or compensation from any individual elected or chosen to a town office for administering to him the oath of office.

ARTICLE TWELFTH.

OF LEGAL PROCEEDINGS IN FAVOR OF AND AGAINST TOWNS.

Actions how con-
strued.Effect of judg-
ment

§ 1. Whenever any controversy or cause of action shall exist between any towns of this state and between any town and individual or corporation such proceedings shall be had, either at law or equity, for the purpose of trying and finally settling such controversy; and the same shall be conducted in the same manner and the judgment or decree therein shall have the like effect as in other suits or proceedings of a similar kind between individuals and corporations.

claims or demands against said town, presented to us this day to be audited, showing to whom the several amounts are allowed:

To *Lorenzo Wood, Esq.*, supervisor of the town of *Dixon*, in said county, for one day's services in road appeal case, as rendered by commissioners of highways, \$1.50

To *Charles Starks*, for his damages allowed by commissioners of highways on road above mentioned, 25.00

(*Specifying particularly the nature of each claim or demand, and to whom the amounts are allowed*) and that we have this day audited and allowed to the above named persons the several sums as above stated.

Witness our hands this — day of — A. D. 18—.

SETH H. WHITMORE, Supervisor.

THOMAS S. HURLBUT, Town Clerk.

TIMOTHY L. MINOR, } Justices of the Peace.
ELISHA PRATT, }

It is held in New York that the board of supervisors are precluded from going behind the certificate of town auditors, to inquire as to the merits of the particular items allowed, but are bound to act upon the amount audited without modification; and that a certificate of town auditors purporting in the body of it to have been made by "the board of auditors of the town of N. H." is sufficient, though the officers have merely signed their names without adding their official titles, and that it need not appear upon the face of the certificate that the auditors met at the proper time and place. It will suffice if in point of fact, their meeting was regular in those respects.—*Onderdonk v. Queen's Co.*, 1 Hill, 195.

§ 2. In all such suits and proceedings the town shall sue and be sued by its name, except where town officers shall be authorized by law to sue in their name of office for the benefit of the town.¹ Suit in name of town.

§ 3. But no towns or their officers shall be required to appear, answer or plead to any such suit or action at the first term of the court after the commencement thereof, (when the same shall be commenced in the circuit court,) unless the process aforesaid shall be served, as herein directed, at least thirty days before the commencement of the term. Serving of process.

§ 4. In all legal proceedings against the town, by name, the first process and all other proceedings required to be served shall be served on the supervisor of the town. And whenever any suit or proceeding shall be commenced, it shall be the duty of the supervisor to attend to the defense thereof, and to lay before the electors of the town, at the first town meeting, a full statement of such suit or proceeding, for their direction in regard to the defense thereof. On whom served. Duty of Supervisor.

§ 5. On the trial of every action, in which the town will be a party or interested, the electors and inhabitants of such town shall be competent witnesses and jurors, except that in suits and proceedings by one town against another no inhabitant of either town shall be a juror.² Witnesses and jurors.

§ 6. Any action in favor of a town, which, if brought by an individual, could be prosecuted before a justice of the peace, may be prosecuted by such town in like manner, before any such justice; but no action to recover shall be brought before any of the justices of the peace residing in the town for the benefit of which the same is prosecuted, but all such actions may be brought before any one of the justices of the peace residing in any other town in the same county. Suits before justices. Except in town.

§ 7. Whenever any action shall be brought to recover a penalty imposed for any trespass committed on the lands belonging to the town, if it shall appear on the trial thereof that the actual amount of injury to such town lands, in consequence of such trespass, exceeds the sum of twelve dollars and fifty cents, then the amount of actual damage, with costs of suit, shall be recovered in said action, instead of any penalty for the same trespass, imposed by the town meeting; and such recovery shall be a bar to every other suit for the same trespass. Trespass suits.

§ 8. Whenever, by any decree or decision in any suit or proceeding, brought to settle any controversy in relation to town commons or other lands, the common property of a town, or for the partition thereof, the right of any town shall be settled and con- Suits in relation to town lands.

(1) [The form of entitling a suit in case of the town being a party, should be thus:]

Town of *Plato*
vs.
James Jackson,

(2) If after a vote of the town not to defend an action brought against it, the supervisor or person representing the town, shall nevertheless make a defence, he will not be a competent witness in the action, for he will be bound to indemnify the town against the costs of the defence.—*Emerson v. Newberry*, 13 Pick., 377.

firm, the court in which such proceedings shall be had may partition such lands according to the rights of the parties.

Recovery of costs. § 9. In all suits or proceedings, prosecuted by or against towns, or by or against town officers in their name of office, costs shall be recovered as in like cases between individuals. Judgments recovered against a town or against town officers, in actions prosecuted by or against them in their name of office, shall be a town charge, and, when levied and collected, shall be paid to the person or persons to whom the same shall have been adjudged.¹

Judgment a town charge.

ARTICLE THIRTEENTH.

OF THE POWERS AND RIGHTS OF COUNTIES AS BODIES CORPORATE.

§ 1. Each county, as a body corporate, has capacity:

Suits. 1st. To sue and be sued, in the manner prescribed by law.²

Purchase and hold lands. 2nd. To purchase and hold land, within its own limits, and for the use of its inhabitants, subject to the power of the general assembly over the same.³

Power to make contracts. 3d. To make such contracts and purchase and hold such personal property as may be necessary to the exercise of its corporate or administrative powers;⁴ and,

To make orders. 4th. To make such orders for the disposition, regulation or use of corporate property as may be deemed conducive to the interests of its inhabitants.

Restriction of power. § 2. No county, under this organization, shall possess or exer-

(1) A town is authorized to indemnify its officers against a liability which they may incur in the *bona fide* discharge of their duties, although it turn out that they have exceeded their legal rights and authority. So held in Massachusetts.—*Eancroft v. Lynfield*, 13 Pick., 506.

(2) Counties can neither sue or be sued at the common law. Their rights and liabilities depend on statutory enactment.—*Schuyler County v. Mercer County*, 4 Gilm., 20.

All actions against a county must be commenced and prosecuted to judgment and execution in the circuit court of that county. All actions wherein a county is plaintiff must be commenced and prosecuted to judgment in the county of the defendant.—*Idem*.

Ordinarily, a law which in general terms speaks of plaintiffs and defendants, applies to persons only, and does not apply to states, counties and municipal corporations, unless expressly named.—*Idem*.

A county is a public corporation, subject to the control of the legislature; and the legislature may release a penalty recovered in a popular action brought for the benefit of a county.—*Holliday v. People*, 5 Gilm., 214. See also, *Coles v. Madison County*, Breese, 115.

Declarations of county commissioners, are not evidence against their county, unless made while officially representing the county, and while engaged in the transaction respecting which the declaration is made.—*La Salle County v. Simmons*, 5 Gilm., 513.

A book kept in the clerk's office of the county commissioners, under their direction, respecting the affairs of the county, though not a public record, is *prima facie* evidence against the county of the facts stated therein.—*Idem*.

(3) A grant to the supervisors for the use of the inhabitants of a particular town, is void; for if the supervisors are a corporation they have no capacity to take and hold lands as supervisors for the use of the inhabitants of a town, or for any other use or purpose than that of the county which they represent.

Supervisors are a corporation with special powers and for special purposes only—they can not act but by special authority.—*Lynch v. Hartwell*, 8 Johns., 422.

(4) A contract made by the proper authorities of the county, with a physician, to render professional services to a pauper, and not entered on record, may be proved by parol. One who at the request of such authorities rendered aid to a person acknowledged by them as a pauper, need not prove the pauper legally entitled to such aid in order to entitle him to recover for such service.—*Vermillion Co. v. Knight*, 1 Scam., 97.

Counties are not liable to pay interest on their contracts, except in pursuance of an express agreement to do so.—*Pike Co. v. Hosford*, 11 Ill., 170.

cise any corporate powers, except such as are enumerated in this act, or shall be specially given by law, or shall be necessary to the exercise of the powers so enumerated or given.

§ 3. All acts and proceedings by or against a county, in its corporate capacity, shall be in the name of the board of supervisors of such county; but every conveyance of lands within the limits of such county, made, in any manner, for the use and benefit of its inhabitants, shall have the same effect as if made to the board of supervisors.¹

§ 4. The powers of a county, as a body politic, can only be exercised by the board of supervisors thereof, or in pursuance of a resolution by them adopted.

§ 5. In all suits or proceedings against a county the service of process shall be by leaving a copy thereof with the clerk of the board of supervisors, and by leaving also a copy with the chairman of said board. In case there shall be no chairman acting, then by leaving a copy with any three members of said board.

ARTICLE FOURTEENTH.

OF THE BOARD OF SUPERVISORS.*

§ 1. The supervisors of the several cities and towns of the counties of this state, that shall adopt the town system, shall meet, annually, in their respective counties, for the dispatch of business, as a board of supervisors. They may also hold special meetings at such times and places as they may find convenient, and shall have power to adjourn, from time to time, as they may deem necessary.

§ 2. Special meetings of the board of supervisors shall be held only when requested by at least one-third of the members of the board; which request shall be in writing, addressed to the clerk of the board, and specifying the time and place of such meeting; upon reception of which the clerk shall immediately transmit notice, in writing, of such meeting to each of the members of the board. The clerk shall also cause notice of such meeting to be

(1) The law which gave jurisdiction over county affairs to the board of supervisors, went into operation on the first Tuesday in April, 1850. The county corporation was not abolished by this law. Its name was changed, but suits instituted in the old name do not therefore abate.—*Town of Ottawa v. Co. of La Salle*, 11 Ills., 654.

By the constitution, the right of a county to adopt township organization is made to depend expressly upon the affirmative vote of a majority of all within the county entitled to vote on the question. The power of the county court, over the county business, continues until the organization is adopted by such vote.—*People ex rel. v. Brown et al.*, 11 Ills., 478.

A conveyance of land to a county, in consideration that the county seat be located at a particular place, does not deprive the legislature of the power to remove the county seat. The donors of the land, if the conveyance be unconditional, can not recover damages for such removal. An agreement that the land should revert, in case of removal, should be expressed in the conveyance, and can not rest in parol.—*Adams et al. v. Logan County*, 11 Ill., 336.

If a specific fund be given by the legislature to a county, to be held in trust for certain purposes, and the fund be diverted from its purpose, and mixed with the general funds of the county, a mandamus may be awarded, directing the payment of the fund to the proper purpose out of the general funds of the county.—*Pike Co. v. the State*, 11 Ill., 202.

*See Board of Health Act, Appendix, p. 272

published in some newspaper published in the county, if any is published therein.¹

Day of meeting. § 3. The annual meetings of the board of supervisors shall be holden on the second Monday in September, in each and every year, at the county seat; and if the court house be deemed convenient to be held therein.

Shall organize by choosing chairman. § 4. The board of supervisors, at their first meeting in every year, shall organize, by choosing one of their number as chairman, who shall preside at all meetings of the board during the year. In case of his absence at any meeting, the members present shall choose one of their number as temporary chairman.²

Produce certificate of election. 1854. § 5. The supervisors shall severally lay before the board of supervisors, at the first meeting after their election, their several certificates of election; which shall be examined by the board of supervisors, and, if found regular, shall be filed in the office of the clerk of the county court.

Powers of the board. § 6. The board of supervisors of each county in this state shall have power, at their annual meetings, or at any other meeting:

¹ *Form of request for Special Meeting of Board of Supervisors.*

To S. S. Saul, Esq., clerk of the Board of Supervisors of Livingston county, State of Illinois:

The undersigned being one-third of the members of the board of supervisors of said county of Livingston, do request that a special meeting of said board be held, to convene on the — day of — A. D. 18—, at the court-house in the town of Pontiac in said county.

Dated this — day of —, A. D. 18—.

H. HILL,

H. HAMLIN,

R. THOMPSON,

JESSE HANNA,

SAMUEL MORRISON,

ROBERT YOUNG,

JESSE SLIDER,

ISAAC WILSON.

Form of Notice to each Supervisor, of Special Meeting of the Board.

To Joshua Mills, Esq., a member of the board of supervisors of Livingston county:

You are hereby notified, that in accordance with a request in writing addressed to the undersigned, clerk of said board of supervisors, by one-third of the members thereof, a special meeting of said board will be held, to convene on the — day of —, A. D. 18—, at the court house in the town of Pontiac in said county.

Dated at Pontiac, this — day of —, 18—.

S. S. SAUL, Clerk of Board of Supervisors.

Form of Notice of Special Meeting of Board of Supervisors, for publication in Newspaper.

SPECIAL MEETING OF BOARD OF SUPERVISORS.

Notice is hereby given, that pursuant to a request of one-third of the members of the board of supervisors of Livingston county, a special meeting of said board will be held, to convene on the — day of —, 18—, at the court-house in the town of Pontiac, in said county.

Dated at Pontiac, this — day of — 18—.

S. S. SAUL, Clerk.

(2) The board of supervisors may elect a temporary chairman, whether there is a regular chairman in existence or not, and any meeting of the board at which a quorum is present must be regarded as valid.—*Town of Ottovau v. Co. of La Salle*, 11 Ills.. 654.

That is, if regularly called in pursuance of law.

1st. To make all such orders concerning the corporate property To make orders of the county as they may deem expedient.

2nd. To audit all accounts chargeable against such county, and Audit accounts against counties. to direct the raising of such sums as may be necessary to defray the same.¹

3d. To audit the accounts of town officers and other persons Audit accounts against towns. against their respective towns, as are not otherwise by law provided, and to direct the raising of such sums as may be necessary to defray the same.

4th. To appropriate funds to aid in the construction of roads Appropriations for roads and bridges. and bridges, in any part of their respective counties, whenever a majority of the whole board of the county may deem it proper and expedient.²

5th. To change the boundaries of towns and to create new Change boundaries and create towns. towns, in their respective counties, in manner provided by law; to designate and give names thereto, and to fix the place of holding the first town meeting therein.³

6th. To change the name of any town or incorporated village in Change names of towns. 1861. their respective counties, upon petition of a majority of the voters of said town or incorporated village.

7th. To relocate or vacate state roads in their respective coun- Vacating of state roads. 1861. ties, as the public interest may require, in manner provided by law.⁴

(1) The power granted to supervisors of a county to examine, settle and allow all accounts chargeable against a county, involves the right to reject, if sufficient reason, in the opinion of the supervisors, is not presented for the allowance.—*People v. Supervisors Dutchess Co.*, 9 Wend., 508.

It is held in Michigan that a county is not liable to an attorney for defending a prisoner at the request of the court when the prisoner is poor and unable to employ counsel.—*Bacon v. Wayne Co.*, 1 Michigan R., 461.

A county is not liable to the clerk of the circuit court for his fees on a *scire facias* upon a recognizance.—*Edgar County v. Mayo*, 3 Gilm., 82.

Sheriffs are not allowed pay from the county for stationery used in the discharge of the duties of their offices; nor for mileage in summoning grand and petit juries. It is held that there is no legal or moral obligation on the counties to pay such charges. These officers take their offices with all the benefits and burthens given or imposed upon them.—*Bryner v. Board of Supervisors*, 24 Ill., 195.

Neither the state, nor county, is bound by law to pay the fees of officers in prosecutions in behalf of the people where no conviction is had; and where the defendant is convicted, the officers must look to the defendant's estate for their costs and run the risk of losing them if he be insolvent.—*Kitchell v. Madison County*, 4 Seam., 163.

The necessary lights and fuel for keeping of the several county offices in a suitable condition for the transaction of business, are a proper county charge; so held in Wisconsin.—*Jefferson Co v. Besley*, 5 Wisconsin R., 134.

A board of supervisors, by auditing and paying part of a claim presented, is not thereby precluded from contesting the residue, even upon a principle which would show the former allowance to have been improper.

A mandamus will not lie to a board of supervisors to control them in the exercise of their discretion as to the amount at which an account presented shall be audited.—*People v. Supervisors*, 1 Hill, 332.

Where a clear legal duty rests upon the board of supervisors, being a matter in which they have no discretion, mandamus will lie, and is the proper remedy to compel them to perform that duty.—*Boyce v. Supervisors of Cayuga*, 20 Barb., 294.

Boards of supervisors can not bind their counties by an act not within the limits of the express powers conferred upon them by statute. They cannot allow a claim on any notions of their own as to its equity.—*Chemung Canal Bank v. Supervisors of Chemung*, 5 Denio, 517.

(2) The act to provide for township organization does not give the board of supervisors authority to appropriate the county funds in aid of the construction of toll bridges, or to aid a private individual in the construction of a free bridge. And a bill to enjoin them for so misapplying the funds of the county is a proper remedy, and will be sustained.—*Colton et al. v. Hanchett et al.*, 13 Ill., 615.

(3) The manner provided for changing boundaries of towns and creating new towns, will be found ante p. 17—ARTICLE THIRD, Sec. 1.

(4) The manner provided for relocating or vacating state roads, will be found in ARTICLE SEVENTEENTH, Sec. 58, post, p. 89.

- To perform other duties. 8th. To perform all other duties, not inconsistent with this act, which may be required of or enjoined on them by any laws of this state, or which are enjoined upon county courts, when holding terms for the transaction of county business in those counties not adopting township organization.¹
- Quorum. § 7. A majority of the supervisors of any county shall constitute a quorum for the transaction of business; and all questions which shall arise at meetings shall be determined by the votes of the majority of the supervisors present, except in such cases as is otherwise provided.
- Open doors. § 8. The board of supervisors shall sit with open doors, and all persons may attend their meetings.
- Chairman to administer oaths. § 9. Every chairman of the board of supervisors shall have power to administer an oath to any person concerning any matters submitted to the board or connected with their powers and duties.
- Clerk of the board. § 10. The clerk of the county court shall be clerk of the board of supervisors, whose general duties shall be:
- Record proceedings. 1st. To record in a book, to be provided for that purpose, all the proceedings of the board.
- Enter decisions of the board. 2nd. To make regular entries of all the resolutions or decisions on all questions concerning the raising or payment of moneys or for the regulating of affairs under their control.
- Record vote. 3d. To record the vote of the supervisors on any question submitted to the board, if required by any member of the board.
- File accounts. 4th. To file and preserve all accounts acted upon by the board.
- Clerk's fees. § 11. The clerk shall receive a reasonable compensation for his services, to be fixed by the board, and to be paid by the county.
- Shall hold books. § 12. The books, records and accounts of the board of supervisors shall be deposited with the clerk, and shall be open, without reward, to the examination of all persons.
- Accounts how indorsed. § 13. It shall be the duty of the clerk to designate upon every account upon which any sum shall be audited and allowed by the board the charges for which the same was allowed, and he shall deliver to any person who may demand it a certified copy of any account on file in his office on receiving from such person five cents for every one hundred words contained in said copy.
- Certified copies. § 14. It shall be the duty of the several boards of supervisors, as often as it shall be necessary, to build court houses and jails, or cause the same to be repaired, in their respective counties, at the expense of such counties.
- Building of court houses and jails. § 15. It shall be the duty of the board of supervisors to take charge of the poor and the management of the poor house in their
- Charge of poor. 1861.

(1) Where the supervisors of a county have neglected to perform any duty required of them at their annual meeting, they may be compelled by mandamus to meet again and perform it. They can not by their neglect nullify a statute imposing duties upon them.

This was a case where the board of supervisors of Chenango county, in the state of New York, at their annual meeting in 1851, neglected to issue warrants for the military commutation, which it was their duty to do by law at that meeting. The Supreme court issued a mandamus requiring them to meet and issue the warrants. *Held*, that the mandamus was properly issued.—*People v. Supervisors of Chenango*, 4 *Seld.*, 317.

NOTE. For further powers and duties of the board of supervisors, see "MISCELLANEOUS PROVISIONS" under head of "COUNTIES AND COUNTY COMMISSIONER'S COURTS," *post*, p. 212.

respective counties. And the overseers of the poor of the several towns shall be accountable to and their compensation and accounts shall be audited by the board of supervisors and paid by the county.

§ 16. Whenever the board of supervisors shall create a new town or change the name of an existing town or incorporated village, the clerk shall transmit to the auditor of public accounts a statement of such action on the part of the board; and if it shall appear that there is already a town or incorporated village in the state of the same name as that designated by the supervisors the auditor shall so inform the clerk of said board; and the supervisors shall designate another name, not already applied to any other town or incorporated village within the state. Creation of new towns or change of name. 1861.

§ 17. Each member of the board of supervisors shall be allowed a compensation for his services and expenses in attending the meeting of the board or for attending to any other business, for the benefit of the county, or as a member of the board, not exceeding two dollars per day, and no more. Compensation of supervisors. 1857

§ 18. The clerk of the board of supervisors shall, at the close of each annual or special meeting of the board, cause a brief statement of the proceedings thereof to be published in a newspaper published in the county, in which shall be set forth the name of every individual who shall have had any account audited and allowed by said board, and the amount of said claim, as allowed and amount claimed, and also their proceedings upon the equalization of the assessment roll. Proceedings to be published. 1861.

§ 19. If any supervisor shall willfully refuse or neglect to perform any of the duties which are or shall be required of him by law as a member of the board of supervisors, he shall, for every such offense, forfeit the sum of two hundred dollars. Neglect of duty. Penalty.

ARTICLE FIFTEENTH.

OF THE COUNTY TREASURER.

§ 1. Every person elected or appointed to the office of county treasurer shall, within ten days after he is notified of his election or appointment, file in the office of the county court clerk a written acceptance of the office of treasurer; and before he enters upon the duties of his office shall give bond to the board of supervisors of the county, with two or more sufficient sureties, to be approved by the board of supervisors, and in such sum as they shall direct, conditioned that such person shall faithfully execute the duties of his office, and shall pay, according to law, all moneys which shall come to his hands as treasurer, and render a just and true account thereof to the board of supervisors or to the auditor of public accounts of this state, when thereupon required.¹ Acceptance of office. Bond. Condition.

¹Form of written acceptance of County Treasurer to be filed in the County Clerk's office.

To James C. Biddlecombe Esq., clerk of the county court of Lake county, in the state of Illinois:

Shall not dis-
pense with bond
as county col-
lector.
1861.

§ 2. The bond required by the preceding section shall not, however, dispense with the necessity of the bond from such treasurer, as county collector of taxes, as now provided by law, and nothing in this act shall be construed as having that effect; but the county treasurer shall be required to execute bond, as county collector, the same and in the same manner as is now by law provided.

Approval of bond
and record.

§ 3. Such bond, when approved by the board of supervisors, shall be entered upon the records and filed in the office of the county clerk. Said clerk shall forward a certified copy thereof to the auditor of public accounts, who shall file the same in his office; and such copy shall have the same force and effect as the original bond. County treasurers' bonds shall be a lien against their real estate.

Receiving and
disbursing
moneys.

§ 4. It shall be the duty of the county treasurer to receive all moneys belonging to the county, from whatever source they may be derived, and all moneys belonging to the state, which, by law, are directed to be paid to him, and to pay and apply such moneys in the manner provided by law.¹

SIR:—Having been elected (or *appointed*) on the — day of —, A. D. 18—, to the office of county treasurer of said county, I hereby notify you that I accept of that office.

Dated at *Waukegan*, in said county, this — day of —, A. D. 18—.

JOHN H. COTES.

Form of County Treasurer's Bond.

KNOW ALL MEN BY THESE PRESENTS, That we, *John H. Cotes*, as principal, and *Lyman Sprague* and *Augustus B. Cotes* as sureties of the county of *Lake*, in the state of Illinois, are held and firmly bound unto the supervisors of the said county of *Lake*, in the sum of (*in a sum directed by the supervisors*) for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, and each of them firmly, by these presents. Sealed with our seals, and dated this — day of —, A. D. 18—.

The condition of this obligation is such, That *whereas*, the above bounden *John H. Cotes* has been elected (or *appointed*) county treasurer of the said county of *Lake*, and has accepted of the office. Now therefore, if the said *John H. Cotes* shall faithfully execute the duties of his said office, and shall pay according to law, all moneys which shall come to his hands as such treasurer, and render a just and true account thereof to the board of supervisors, or to the auditor of public accounts of this state, when thereupon required, then this obligation to be void and of no effect, otherwise to remain in full force and effect.

JOHN H. COTES,
LYMAN SPRAGUE,
AUGUSTUS B. COTES,

[SEAL.]
[SEAL.]
[SEAL.]

NOTE.—See act regulating the collection of the revenue in counties adopting the township organization law approved February 12th, 1858, *post*.

A county court, or board of supervisors, can remove a county treasurer only for causes specified in the statute; they have no general powers of removal.—*Clark v. The People*, 15 Ills., 213.

(1) County orders paid by the treasurer have lost their vitality and can not again become valid securities in the hands of an innocent holder. But where without any fraudulent intents the holder of large county orders exchanged them with the treasurer for smaller ones which he had paid but which have never been allowed in his accounts, the debt represented by the large orders is not extinguished. Where, however, the holder of county orders lends them to the treasurer and thereby enables him to use them as his vouchers on a settlement,

§ 5. The county treasurer shall keep a just and true account of the receipts and expenditures of all moneys, in a book or books, to be kept for that purpose; which books shall be provided at the expense of the county. Keep account of moneys.

§ 6. The county treasurer shall have the same power to collect the taxes charged against the delinquent or nonresident lands or town lots, and to make sale thereof for the same, as is now or may hereafter be vested in the sheriff or collector, under the general laws of this state, and shall account for and pay over the state tax, in like manner and at the same time that county collectors are required to pay over said tax. Said treasurer shall be entitled to like fees for delinquent real estate and for traveling to the seat of government as county collectors are entitled to under the revenue laws. The county treasurer shall, within twenty days after having completed the collection of the delinquent tax, deposit the assessment rolls or tax books returned by the town collectors in the office of the county clerk. Power to collect taxes against delinquents or non-residents. Fees. Return of assessment roll.

§ 7. At the annual meeting of the board of supervisors, or at such other times as they shall direct, the county treasurer shall exhibit to them all his books and accounts, and all vouchers relating to the same, to be credited and allowed.¹ Exhibiting books and accounts.

§ 8. Upon the death, resignation or removal from office of any county treasurer, all the books and papers belonging to his office shall be delivered to his successor in office, upon his oath, or, in case of his death, upon the oath of his executors or administrators. In case such treasurer has left the county a demand may be made of any one having charge of the books or papers belonging to said office, who shall surrender them up, and on oath, if required. Books delivered to successor on oath.

§ 9. If any such preceding county treasurer, or, in case of his death, if his executors or administrators shall refuse or neglect to deliver such books, papers and moneys, upon oath, when lawfully required or demanded, every such person shall forfeit, for the use of the county, the sum of one thousand dollars. Penalty for neglect to deliver books.

§ 10. The county collectors, or treasurers in counties adopting township organization, shall hereafter be allowed, in their settlement with the auditor, for receiving the state tax from the town collectors, and paying the same into the state treasury, adjusting the accounts of said town collectors, and correcting delinquent lists, a commission of two per cent., when the amount received does not exceed ten thousand dollars, and one per cent. on all sums received from town collectors over that amount, and shall be allowed one per cent. for receiving the county and town tax, and Fees on settlement with auditor, and other duties. 1857. 1861.

and is afterwards repaid in other orders which have been paid by the treasurer subsequent to the settlement he is estopped from denying the payment of the orders lent, and can not recover upon those returned to him.—*Chemung Canal Bank v. Board of Supervisors of Chemung Co.*, 5 Denio 517.

A county is not bound to pay interest on county orders.—*Madison Co. v. Bartlett*, 1 Scam., 67.

County commissioners or boards of supervisors making settlements with collectors of the revenue, act as agents of the state, and do not adjudicate as a court. Their orders entered upon their records, are memoranda only, and only *prima facie* evidence of the correctness of the result stated. Mistakes made in such settlement may be inquired into and corrected.—*Washington County v. Parlier et al.*, 5 Gilman, 232.

one per cent. for paying out the same: *provided*, that he shall not be allowed any commission for paying over to a successor.

Failure to pay
over revenue.

§ 11. Whenever any county treasurer shall fail or refuse to pay over the county revenue the board of supervisors shall cause suit to be prosecuted on his bond; and the auditor shall have the same power to prosecute suit against the county treasurers, on the copy of their bonds, as is allowed by law for prosecuting suits against county collectors.

Suit on bond.

Money recovered,
how appropriated.

§ 12. All moneys recovered in any such action shall be paid or appropriated for the uses contemplated or directed by law.

ARTICLE SIXTEENTH.

MISCELLANEOUS PROVISIONS CONCERNING THE ASSESSMENT OF PROPERTY AND COLLECTION OF TAXES.¹

Where persons
shall be assessed.

§ 1. Every person shall be assessed in the town or district where he resides for all the lands then owned by him within such town or district.

In whose name
land assessed.

§ 2. Land owned by a person residing in a town or district where the same is situated, but occupied by another person, may be assessed in the name of the owner or occupant, at the election of the assessor.

Personal estate,
where assessed.

§ 3. Every person shall be assessed in the town or district where he resides when the assessment is made for all personal estate owned by him, including all such personal estate in his possession or under his control, as trustee, guardian, executor or administrator; and in no case shall property held under either of these trusts be assessed against any other person.

Property of cor-
porations, where
assessed.

§ 4. The real estate of all incorporated companies, liable to taxation, shall be assessed in the town or district in which the same shall lie, in the same manner as the real estate of individuals. All the capital stock of every incorporated company, liable to taxation, shall be assessed in the town or district where the principal office of said company is located or business transacted. In the case of toll-bridges, the company owning such bridge shall be assessed in the town or district in which the tolls are collected. In the case of a stage company, the horses and stages shall be taxed in the town or district where they are usually kept: *provided*, that nothing in this section or act contained shall in any way affect the manner of assessing the taxable property belonging to any railroad company or companies, as now provided or prescribed by the assessment or revenue laws of this state.

Provision as to
railroads.

1861.

County clerks to
prepare books for
assessors.

§ 5. It shall be the duty of the clerk of the county court, in each and every county where they have organized into townships, to procure or prepare, in conformity with the instructions with

(1) In revising the act to provide for township organization, it was the intention of the legislature to re-enact so much of the law concerning the assessment of property and collection of taxes embraced in the former act of 1851 and acts amendatory thereof as remained in force, and to make no further or other changes than seemed to be demanded. It is believed that no very material changes have been made.

which he may, from time to time, be furnished by the auditor of public accounts, blanks or books properly ruled and with suitable headings, for the use of the assessors of the several towns or districts in his county; a suitable number of which shall always be ready for the assessors throughout the county. And each assessor shall call for the same, on or before the first day of May in each and every year. The expense of procuring the same shall be audited by the board of supervisors, and paid out of the county treasury. He shall, also, furnish each assessor with a list of all taxable lands within their respective towns or districts as have not been heretofore furnished. Expense of books. List of lands.

§ 6. On the Saturday succeeding the first Tuesday of April, A. D. 1861, and every year thereafter, the clerk of the county court shall have, ready to be delivered to the assessors of each town, a book, properly ruled and headed, containing a list of the real estate, in numerical order, with such blank columns as may be necessary, for the use of the assessors. Lists of lands prepared by county clerks annually for assessors. 1861.

§ 7. The clerk, in making out said list, shall take as his guide the assessment list or collector's book of the previous year and the list of subsequent conveyances: *provided*, that the lists of lands reported in the annual abstract shall be furnished to the assessors of the several towns in which said lands described in said abstract may be situated, within five days from and after such abstract is received from the auditor's office; and, at the same time, the clerk shall also cause to be delivered to the assessors aforesaid, a book, properly ruled and headed, for the abstract of the assessment of personal property. Clerks' guide in making lists. 1861. Proviso.

§ 8. Between the first day of April and July in each year, the assessors shall, after being furnished with the necessary blanks, proceed to ascertain, by diligent inquiry, the names of all the taxable inhabitants in their respective towns or districts, and also the taxable property, real or personal, within the same, and shall proceed to take a list of taxable property in his town and assess the value thereof, in the manner and as now provided by law. Duty of assessors in proceeding to assess property. 1861.

§ 9. They shall set down, in separate columns, as headed for each article of taxable property, according to their best information and judgment in accordance with the revenue laws of this state. Set down each article.

§ 10. When a person is assessed as trustee, guardian, executor or administrator, he shall be assessed as such with the addition of his name to his representative character. Trustees, guardians, etc.

§ 11. Every assessor shall complete the assessment rolls on or before the first Monday in July, as now provided by law, and shall forthwith cause notices thereof to be posted up in three or more of the most public places in the town, ward or district. Time of completion of assessment rolls. Notice of.

§ 12. Such notices shall set forth the time and place where he will meet with the town clerk and supervisor of the town, to correct the roll; which time of meeting shall not be less than ten days from completing the assessments, nor more than fifteen days from the time of such completion. Contents of notice. Time of meeting.

- Review of assessments. § 13. The assessor, town clerk, and supervisor, shall attend at the time and place specified in the notice, and, on the application of any person conceiving himself aggrieved, they shall review the assessment; and when the person so objecting thereto shall make an affidavit that the value of his personal estate does not exceed a certain sum specified in such affidavit, the assessor shall reduce the assessment to the sum specified in such affidavit; and if he or any other one objects to the valuation put upon any of their real estate, the board shall hear the objections, and may reduce the same, if a majority of the board think it advisable; and in such case the assessor shall correct his list.¹
- Reduction of erroneous assessments.
- Forms to be used. § 14. The assessors, in the execution of their duties, shall use the forms and preserve the instructions which shall, from time to time, be transmitted to them by the auditor of public accounts, or furnished them by the county clerks.
- Equalization of assessments by board of supervisors. § 15. The board of supervisors of each county in this state, at their annual meeting, shall examine the assessment rolls of the several towns in their county, for the purpose of ascertaining whether the valuations in one town or district bear just relation to all the towns and districts in the county; and they may increase or diminish the aggregate valuation of real estate, in any town or district, by adding or deducting such sum upon the hundred as may, in their opinion, be necessary, to produce a just relation between all the valuations of real estate in the county; but they shall, in no instance, reduce the aggregate valuation of all the towns and districts below the aggregate valuation thereof as made by the assessor. They may make such alterations in the descriptions of the lands of non-residents as they shall deem necessary; and they shall assess the value of all such lands as have been omitted by the assessor and listed by the clerk, and cause the same to be placed opposite the description of said lands, in a column prepared for that purpose; and for such service the clerk shall be allowed one cent for each tract or description so equalized.
- Manner of equalization.
1861. § 16. Said board of supervisors shall have power, and it is hereby made their duty, in case the assessment roll of any town or towns shall, by affidavit, or otherwise, be made to appear to the satisfaction of said board or a majority of them to have been unlawfully, partially, or improperly made, and that such assessment is grossly wrong and partial, to amend such assessment, or declare the same null and void; and said board shall have power to appoint some suitable person or persons, who shall be residents of such towns, to proceed to make a new assessment of property therein, and make return thereof to the board of supervisors, on or before a day to be fixed and specified by said board.
- Unfair assessment, how amended or set aside.
- 1854.
- New assessment may be ordered.

(1.) This provision, requiring the assessor, town clerk and supervisor to attend at the time and place specified in the notice, for the purpose of reviewing the assessment, is imperative; and without such meeting no tax payer can be bound by the assessment. When one party proved that the town clerk was not present at such meeting, *held* to throw on the other party the burden of proving that the other two complied with the law, if it is conceded that two had power to act. The owner of the land, on trial of a tax title, has the right to raise objections of this character.—*Hough v. Hastings*, 18 Ill., 312.

§ 17. In case the collector of any town shall have been or may hereafter be estopped, by injunction or the decision of any court, from the collection of the taxes, in consequence of the assessment of the property in said town being wrongfully or illegally assessed, it shall be the duty of the board of supervisors of the county in which any such town is located to hold a meeting, as soon after they shall have notice of such injunction being granted or decision rendered as practicable, and they shall inquire into the facts of the case; and if a majority of the board are of the opinion that any such assessment was wrongfully or illegally made, they are hereby authorized and empowered, and it shall be their duty to appoint one or more persons, residents of said town to reassess the property therein.

Proceedings in case of injunction.

1854.

Reassessments.

§ 18. The person or persons so appointed, shall make and subscribe the oath and be governed in all things pertaining to said assessment in like manner as town assessors, and shall proceed, without delay, to make such reassessment. Such person or persons shall attend at the office of the town clerk of said town, for the purpose of reviewing the lists or rolls of said assessment. And said assessment roll or lists shall be examined and corrected, in like manner and by the same officers that would be authorized to review and correct it if it had been a regular assessment, except that the person or persons making the assessment shall act, instead of the regular assessor: *provided*, that the person or persons making such assessment shall first give at least ten days' notice of the time and place of reviewing the assessment; which notice shall be once published in some newspaper published in said county, if there be any paper published therein; and said notice shall be posted up in three or more of the most public places in such town.

Review and correction of assessment. 1854.

Manner of proceeding.

Proviso

Notice of reviewing assessment.

§ 19. The person or persons making the assessment aforesaid, shall make return thereof to the county clerk, in manner and form as is or may be prescribed by law for making returns of assessment, and be allowed such reasonable compensation therefor as the board of supervisors shall determine and allow; which compensation shall be paid in like manner as the compensation of town assessors is paid. Upon the return of the assessment rolls, aforesaid, the county clerk shall cause the proper list of the property assessed, with the taxes extended thereon, to be made, for the use of the town collector. Said lists shall be made out and delivered to the collector authorized to collect the taxes due thereon, as soon after the assessment rolls or lists are received by the clerk as practicable.

Returns to county clerk. 1854.

Compensation of person assessing.

Lists for town collector.

§ 20. The board of supervisors shall have power, and they are hereby fully authorized, to appoint some suitable person to collect the taxes due on the lists made out, as aforesaid, if in their opinion it is expedient to do so. And the person so appointed shall execute a bond and qualify, in like manner, and shall receive like compensation, and shall be subject to like penalties, as town collectors are subject to. Any person appointed and qualified, as provided for in this section, shall have full power and authority to

Appointment of collector. 1854.

Bond.

Power to collect.

collect the taxes charged in the tax list; and for that purpose he may levy on and make sale of goods and chattels, and do all and everything necessary to be done in the premises, in like manner as town collectors are authorized to do by the general laws relative to the collection of the revenue.

Time fixed for return.

Proviso
1854.

Non-resident property

Neglect to pay over state revenue in time.
1854.

Disputed claims to property. Payment received from each.
1857.

Satisfaction piece to collectors

Satisfaction of bond.

Fees for acknowledging.

County clerk's fees. Services concerning assessments.
1861.

County tax to be five mills.

§ 21. The board of supervisors shall fix the time at which such collector shall make return and settlement for the taxes collected by him: *provided*, that such time shall in no case exceed sixty days from the time the tax list is delivered to said collector; and the county collector is hereby authorized and required to collect the taxes due on any assessment made under the provisions of this act, on non-resident property, by sale or otherwise, in like manner as he is authorized to do in cases of regular assessments.

§ 22. In all cases where the collector of any town shall not have paid over to the county collector the state revenue, prior to the time such county collector is required to pay said revenue into the state treasury, the county collector shall pay over the state revenue collected in said town within thirty days after the time of settlement with the town collectors.

§ 23. When two or more persons shall be claimants of any lands, the town collector shall be authorized to receive payment of taxes from each claimant of such land, and give receipt for the same; and said collector shall report to the clerk of the county court such double tax, to be by him disposed of as is now required by law—which receipt shall be evidence in all courts, where the same shall come in question, of the payment of taxes on the land therein described for the year or years therein mentioned.

§ 24. Upon the settlement of the amount of taxes directed to be collected by any collector in any of the towns or cities in this state, the county treasurer shall, if requested, give to such collector or any of his sureties a satisfaction piece, in writing, and shall acknowledge the same before some person authorized to take acknowledgments of deeds.

§ 25. Upon the production of such satisfaction piece, acknowledged as aforesaid, the recorder of the county shall enter satisfaction of record of the collector's bond; which shall operate, *prima facie*, as a discharge of the sureties only.

§ 26. The officer taking and returning such acknowledgment shall be entitled to the same fees as for taking and entering acknowledgments of satisfaction of a deed or mortgage.

§ 27. The clerks of the county courts shall hereafter be allowed the same fees for making transcripts of each taxable town lot for the use of the assessor; for copying the same, and computing and extending the taxes thereon; for making record of each town lot for judgment; for making transcript of judgment for sale, and for assisting the collector in selling the same, as are now allowed by law for like services on each tract of land. The board of supervisors of each county shall have power to levy, for county purposes, a tax of not exceeding five mills on each dollar's

worth of taxable property, instead of not exceeding four mills, as now provided by law.

§ 28. Nothing in this article shall be construed as affecting the provisions of any law now in force concerning the assessment of property and collection of taxes, when the same is not in conflict with the provisions herein; but where the same shall be in conflict with any of the provisions of this act, in that case the provisions herein shall govern.

Prior laws not repealed unless in conflict. 1861.

ARTICLE SEVENTEENTH.

OF ROADS, HIGHWAYS AND BRIDGES.^{1*}

§ 1. The commissioners of highways, in the several towns in this state, shall have the care and superintendence of highways and bridges therein, and it shall be their duty:²

Powers of commissioners of highways.

(1) It has been well observed that nothing tends to mark more distinctly the progress of society, in any country, than the construction and improvement of public roads. It is a subject which has claimed the attention of all prosperous and well regulated communities in all ages of the world. In England, every parish is bound of common right to keep the high roads that pass through them in good and sufficient repair; unless by reason of the tenure of lands, or otherwise, this care is consigned to some particular private person. From this burthen no man was exempt by the ancient laws of that country, whatever other immunities he might enjoy; this being a part of the *trimoda necessitas* to which every man's estate was subject. For the most part the care of roads, only, seems to be left to parishes, that of bridges devolving mostly upon counties at large; by *Stat. 22 Hen. VIII, chap. 5*, if the parish neglected those repairs they might, formerly, as now, be indicted for such neglect; but it was not then incumbent on any particular officer to call the parish together and set them upon this work; for which reason by the *stat. 2 and 3 Ph. and M., chap. 8.*, surveyors of highways were ordered to be chosen in every parish. See 1 *Black. Com.*, 358. Like officers in the United States are designated by different appellations, as surveyors, commissioners, overseers, supervisors, &c.

This office, says Mr. Dalton, (*Just.*, chap. 50,) exactly answers to that of the *curatores viarum* of the Romans; but it should seem that theirs was an office of rather more dignity and authority than that of surveyor of highways in England, not only from comparing the method of making and mending the Roman ways with those of the English parishes, but also because one Thermus, a distinguished citizen who was the curator of the Flaminian way, was candidate for the consulship with Julius Cæsar.

In the New England states, likewise, the care and superintendence of roads has been accepted by some of the most eminent men. Gov. Briggs, of Massachusetts, not many years since, held the office of chairman of commissioners of highways of Berkshire county, in that state—yet in the state of Illinois such offices are considered so burdensome that a fine has to be imposed by statute upon such as refuse to accept when chosen or appointed to them. The state of Illinois certainly furnishes superior facilities for excellent roads; and it would seem that ample provisions have been made by this act, for their construction and improvement. Efficient officers and a proper understanding of duty, is all that is required to insure the end designed.

Under our system, the construction of roads and bridges is, for the most part accomplished through our township organization; the counties contributing towards the construction of bridges, in cases where the expense would be too onerous to be wholly borne by the towns in which they are situated. The statute in express terms gives to commissioners of highways when elected the care and superintendence of the highways and bridges of the town, and confers upon them all powers requisite for the execution of their trust. They are in no way responsible to the town, but are themselves a species of *quasi* corporation, with power to sue and be sued, having legal succession and deriving their authority not through the town, but directly from the statute. The towns have no power to give the slightest direction or instruction to these officers as to the performance of their duties.—*Commissioners of Niles v. Martin*, 4 Mich. R., 557.

(2) Commissioners of highways can not by virtue of their office bring suits to recover damages against individuals or corporations for illegally entering upon and taking possession of the public highways or bridges of their town. Neither have the electors of a town, at town meeting, power by resolution or otherwise, to authorize such commissioners to bring an action in their own names or in their name of office, for such injuries. Such a resolution, if passed at town meeting, would not bind the town.—*Cornell v. Guilford*, 1 Den., 510.

In the case cited, the electors of a town at town meeting directed the commissioners of highways to prosecute a turnpike company for entering upon and taking possession of a public highway and bridge in that town, and the commissioners accordingly brought a suit for the cause of action in their names as commissioners, and had judgment against them. *Held*,

*See Drainage Law, Appendix, p. 272.

Repairing of
roads and
bridges.
1861.

Establish and al-
ter roads.

Describe roads
already laid out.

1st. To give directions for the repairing of roads and bridges in their respective towns, and to cause the building of bridges, when the public interests or necessity require it.¹

2nd. To lay out and establish roads, to regulate the roads already laid out, and to alter or vacate such roads as they, or a majority of them, shall deem proper, as hereinafter provided.²

3rd. To cause such roads, used as highways, as have been laid out, but not sufficiently described, and such as have been used for twenty years, but not recorded, to be ascertained, described, and entered of record in the town clerk's office.³

that they could not sustain an action against the town to be reimbursed their costs and expenses, or the costs recovered against them in that suit.

The electors of a town can not bind the town, except in manner prescribed by law.—*Id.* See ante, p. 13, Note 1.

A bond taken in the names of the commissioners of highways of a town in virtue of office, for the benefit of the town in its corporate capacity, and intended to relieve the taxable inhabitants of the town from the payment of a tax for a public improvement, viz., the extension and opening of a public highway, can not be enforced against the obligors; the commissioners having no authority to take a bond of that nature and the general policy of the law forbidding such a transaction. So held, notwithstanding the improvement was intended to be a village improvement, local in its character, from which the inhabitants of the town at large would derive little or no advantage, and the obligors as residents of the village, or owning property there, were, for the sake of the benefit to the village, willing to assume the cost of the improvement and indemnify the town.—*Webb and others v. Albertson and others*, 4 Barb., 51.

(1) Chancellor Kent, in speaking of the duty of commissioners of highways, in keeping roads in repair, says: This seems to be a general duty, applicable at all times, and in all places; yet when we come to read the details of their duty, we perceive it does not exist absolutely, but arises only when the commissioners have money in hand from forfeitures and penalties, or which have been paid over to them under the direction of the supervisors.—17 Johns., 432. The powers of the commissioners of highways are co-extensive with the territory included in the public way and they may work and improve every part and parcel of it, at pleasure, being only responsible for a wanton or malicious injury to the rights of the adjacent owners. In villages or other thickly settled portions, where their powers are not superseded by acts of incorporation, or otherwise abridged, they may make reasonable and suitable provisions for walks or passways for foot passengers, at the sides of the streets or highways.—*Graves & White v. Otis and others*, 2 Hill, 466.

(2) A town can not by vote, authorize or compel the commissioners of highways to lay out, alter or discontinue a particular town way or public road; their duty being expressly pointed out by law, and they can only act in obedience to its provisions.—*Keen v. Stetson*, 5 Pick., 492. For duty of commissioners in this respect, see post, section 51.

(3) Under this provision of the law it will be the duty of the commissioners, without request or petition, to proceed at once to re-survey all such roads as they shall deem not sufficiently described, as well as such as have been used for twenty years, but not recorded, that the same may become a matter of town record, and their precise location be the more easily determined, which may avoid any disputes between parties interested that might otherwise arise. The former will doubtless include most of the roads which have been laid out and established by virtue of county authority; and, indeed, it has been the policy of very many towns to cause all such roads indiscriminately to be resurveyed for the convenience of a perfect record in the immediate neighborhood, but their authority to do this where roads are already sufficiently described, may well be questioned. Twenty years uninterrupted user of a way is *prima facie* evidence of a prescriptive right.—1 Saund., 323 a 10 East 476—2 Wills, 532 Br. & Ring, 403. Cowp., 215

Hence all such roads as have been used and traveled by the public for twenty years without interruption, become public highways by prescription, which in law is defined to be the manner of acquiring property or any particular right, by a long, honest and uninterrupted possession or use during the time required by law.—*Bouv. L. Dict.*, title "Prescription."

The public may acquire the right to the use of land as a highway, by dedication, by use in the nature of prescription, or by condemnation; and the uninterrupted use of land for a highway for the period of twenty years, is sufficient to establish the existence of a highway. The fact of dedication, upon a conflict of testimony, in case of contest, is left to the jury, and their finding will not usually be disturbed.—*Daniels v. the People*, 21 Ills., 439.

The public, however, have not the right to use and occupy the soil of an individual adjoining navigable waters, as a public landing and place of deposit of property in its transit, against the will of the owner, although such user has been continued for more than twenty years. The user can not be urged by the public either as the foundation of a legal presumption of a grant, and thus justify a claim by prescription, or as evidence of dedication of the premises to public use.—*Pearsall v. Post*, 20 Wend., 111. S. C. on Error, 22 Wend., 425.

The act authorizing commissioners of highways to ascertain, describe and enter of record, roads used as public highways for twenty years, confers no authority upon them to adjudge what was originally intended in relation to the width or location of the road, any further than such intention is manifested by actual user, and they can not increase the width of the

4th. To cause the highways and bridges, which are or may be erected over streams intersecting highways, to be kept in repair.¹ Highways over streams.

5th. To divide their respective towns into so many road districts as they shall deem convenient, by writing, under their hands, to be lodged with the town clerk, and by him to be entered in the town book. Such division to be made annually, if they shall think it necessary; and in all cases to be made at least ten days before the annual town meeting.² Divide town into road districts.

road or change its location. If the commissioners, in such cases, encroach upon lands which do not belong to the highway as it had been actually opened and used, the owner thereof can not take his remedy by appeal, as in other cases, but must seek it in some other form.—24 Wend., 491.

Though the statute requires public roads to be laid out four rods wide, and when they are laid out under the statute they are deemed to be that width; yet where they are claimed not as being laid out under the statute, but by reason of a user for twenty years or more, they may be less than four rods wide.—*Harlan v. Harrison*, 6 Cow., 189.

It seems that whether the highway is by user only or by the statute, it must be of the width prescribed by law, where the dedication or donation is not expressly or impliedly restricted by the owner; when not so restricted, it is not confined to the mere track which is beaten by carriages and the feet of animals, in passing along, but includes and carries with it the width as provided by statute.—*Bumpers v. Miller*, 4 Mich. R., 164.

Where commissioners of highways proceed under this act to describe a road more sufficiently which has been formerly laid out but not sufficiently described, they evidently have no authority to change the width of the road—they can only determine the location of the road in question.—*Bumpers v. Miller*, 4 Mich. R., 161.

Form of order of Commissioners of Highways for ascertaining a road imperfectly described or not recorded.

Lake County, } ss.
Town of Avon, }

Whereas, a road leading from *Hainesville*, northward to the *Fox River road*, in said town of *Avon*, and now used as a highway, was laid out by the commissioners of highways of said town, on the — day of —, A. D. 18—, (or, by authority of the County or County Commissioners' Court, as the case may be,) but which is not sufficiently described of record, (or, has been used for twenty years for such highway, but has never been recorded.)

Now, therefore, we the undersigned commissioners of highways for the said town of *Avon*, do order that said road be ascertained, described and entered of record in the clerk's office of said town, according to a survey which has been made under our direction, as follows: (*here insert the survey.*) And we do further order that the line of said survey be the center of said road and that the same be of the width of — rods.

Given under our hands this — day of —, A. D. 18—.

NAHUM WHITE,	} Commissioners
ORVILLE SLUSSER,	
WM. H. HALL,	
	} of
	} Highways.

(1) It seems that where a bridge is built by an individual over a natural stream, for his own benefit, if the bridge be of public utility and is used by the public, they are bound to keep it in repair; but not so when the necessity for the bridge is created by the individual.—*Dyert v. Schenck*, 23 Wend., 446.

Commissioners of highways are not bound to build or repair bridges when not in funds to defray the expenses.—7 Wend., 474.

An indictment against commissioners of highways is defective unless it aver that the defendants had funds or other means to defray the expenses.—2 Hill, 619.

At common law, the counties and not towns were liable to build and repair the necessary bridges and the remedy for neglect was by indictment.—17 Johns., 452.

²Form of Order dividing Town into Road Districts.

Kendall County, } ss.
Town of Oswego, }

We, the commissioners of highways for the said town of *Oswego*, do hereby order that said town be divided into — road districts, as follows:—Road district number one shall embrace all of the highways contained within the following territory, (or boundaries, giving the description by sections, or out-

To assign road labor.

Working of highways.

To require overseers to warn persons to work.

Commissioners to choose treasurer. 1854.

Shall give bond.

6th. To assign to each of the said road districts such of the inhabitants liable to work on highways as they shall think proper, having regard to proximity of residence, as much as shall be; and, and as often as they shall deem necessary, to warn all persons to work on highways to come and work thereon, with such implements, carriages, sleds, cattle, or teams, as the said commissioners, or any of them, direct.¹

§ 2. At the first meeting of the commissioners of highways, after they shall have been duly elected and qualified, they shall proceed to choose one of their number treasurer. The treasurer so chosen shall receive and have charge of all moneys raised in the town for the support and maintenance of roads and bridges. He shall hold such moneys, at all times, subject to the order of the commissioners of highways, and shall pay them over upon their order, or a majority of said commissioners, and not otherwise. He shall execute bond, with good and sufficient security, in such manner as the supervisor and town clerk shall determine, conditioned for the faithful discharge of his duties as such treasurer, and that he will honestly and faithfully account for and pay over, upon the order of the commissioners of highways, all moneys that shall come to his hands by virtue of his said office—which bond shall be payable to the supervisor of the town and his successor in office, and be approved by the supervisor and town clerk, and filed in the town clerk's office.²

ward boundaries, as may be thought proper,) and all the inhabitants liable to work on the highways residing therein, shall be and are hereby assigned to work on the highways in said district number one. District number two shall, &c., *(continue as aforesaid, until the whole town is divided.)*

Given under our hands this — day of — A. D. 18—.

ALFRED EDSON,	} Commissioners of Highways.
E. DODD,	
O. H. SHERWOOD,	

(1) There has been some confusion in the laws in reference to the jurisdiction of roads in counties adopting township organization; by the terms of this act it is conferred upon the commissioners of highways, but by a subsequent Act of the Legislature, entitled "An Act to amend chapter 98 of the Revised Statutes, and to locate certain roads," approved February 17th, 1851, and which went into effect April 17th, 1851, (*See Sess. Laws 1851, p. 179, § 19.*) it is provided "That the county courts of the several counties of this state, shall have the supervision and control of all roads and public highways within their respective counties, whether such county be organized under or by virtue of the "township organization law" or otherwise, and shall be governed by the several laws of this state relating to roads and public highways previous and at the time of such organization, and all laws and parts of laws coming within the purview of this act, or inconsistent therewith, be and the same are hereby repealed."

This law continued in force until the session of 1853, when the following act was passed: 'An Act to amend an Act entitled 'an Act to amend chapter ninety-three of the "Revised Statutes and to locate certain Roads."

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That so much of the nineteenth section of the above recited Act as gives to the county court supervision and control of all roads and public highways in counties which have adopted township organization, be, and the same is hereby repealed.*

§ 2. This Act shall be in force from and after its passage. Approved February 12th, 1853." Thus it would seem that from April 17, 1851, to February 12, 1853, the county court, even in counties adopting township organization, had the supervision and control of all roads and public highways within their respective counties.

² *Form of Bond of Treasurer of Commissioner of Highways.*

Know all men by these presents, That we, Thomas Ralston, as princel-

§ 3. The commissioners of highways, of each town, shall render to the board of town auditors, at their annual meeting for auditing the accounts of town officers, an account, in writing, stating:

Report of commissioners of highways to town auditors.

1st. The labor assessed and performed in such towns.

2d. The sums received by such commissioners for fines and commutations, and all other moneys received under this act.

3d. A statement of the improvements necessary to be made on such roads and bridges, and an estimate of the probable expense of making such improvement, beyond what the labor to be assessed in that year and the road tax will accomplish.

4th. Also, a statement, in writing, of all expenses and damages, in consequence of laying out, altering or discontinuing roads.

5th. Also, a statement of the amount received from the collector of the town, or from any other source, up to the time of such statement, and the manner in which the same, if any sum, has been paid out and expended, to whom, and on what account.¹

pal and *Robert Ralston* and *Charles Hasken*, as sureties, are firmly held and bound to *Wilber D. Armstrong*, supervisor of the town of *Harlem*, in the county of *Winnebago*, and to his successors in office, in the penal sum of _____ dollars, which payment to be well and truly made, we do bind ourselves, our heirs, executors or administrators, jointly and severally, by these presents.

The condition of this obligation is such, that whereas, the above bounden *Thomas Ralston*, was on the — day of —, 18—, duly chosen treasurer of the board of commissioners of highways of the said town of *Harlem*, and is about to enter upon the performance of the duties of said office. Now, therefore, if the said *Thomas Ralston*, as such treasurer, shall honestly and faithfully account for, and pay over upon the order of the commissioners of highways of said town, all moneys that shall come into his hands by virtue of his said office, then this obligation shall be void, otherwise to be in full force.

Witness our hands and seals, this — day of —, A. D. 18—.

THOMAS RALSTON,	[SEAL.]
ROBERT RALSTON,	[SEAL.]
CHARLES HASKEN,	[SEAL.]

¹*Form of Account of Commissioners of Highways to be rendered to Town Auditors.*

To the Board of Town Auditors of the town of *Antioch* in the county of *Lake*, and state of *Illinois*:

The annual account of the commissioners of highways of *Antioch*, for the year ending the — day of —, A. D. 18—, sheweth as follows, to wit:

1st. The labor assessed in said town during the year ending on the — day of —, A. D. 18—, is _____ days, and the amount of said labor actually performed is _____ days, as appears by the returns made to us by the several overseers of highways in said town.

2d. We have received for fines and commutations, and from other sources, under the statutes relative to highways, the sum of _____ dollars, as follows, to wit:

1856.		
July 6.	From <i>Ira R. Webb</i> , as balance of money received by him as overseer,	\$ 7.87
Oct. 9.	From <i>John Smith</i> , penalty for refusing to serve as overseer,	10.00

3d. The improvements necessary to be made on the roads and bridges in said town are as follows: (*Here state what improvements are necessary.*) We estimate the probable expense of making such improvements, beyond what

- Guide-board. § 4. It shall be the duty of the commissioners of highways of each town to cause suitable guide-boards to be put up at such places as they may deem necessary.
- Scraper and plows. § 5. The commissioners of highways, whenever they shall think it necessary, may direct and empower any overseer of highways, in their respective towns, to procure a good and sufficient iron or steel-shod scraper and plow, or either of them, for the uses of his road district, to be paid for by moneys arising from commutation and fine within the district.
- Meetings of commissioners. § 6. The commissioners of highways of each town shall meet, within eighteen days after they shall be chosen, at the town clerk's office, on such day as they shall agree upon, and afterwards at such other times and places as they shall think proper.
- Assessment of highway labor. § 7. The town clerk shall deliver the lists filed by the overseers to the commissioners of highways of the town, who shall proceed to ascertain, estimate and assess the highway labor and road tax to be performed and paid in their town the next ensuing year.
- Assessment of poll tax. § 8. 1st. Every male inhabitant, being above the age of twenty-one years and under the age of fifty, (excepting paupers, idiots, lunatics, and such others as are exempt by law,) shall be assessed not less than one nor more than two days in each and every year.
1861. 2nd. The commissioners of highways shall assess a road tax on all real estate and personal property liable to taxation of the town, to any amount they may deem necessary, not exceeding
- Road tax on real estate. 1861.

the labor to be assessed this year, and the road will accomplish, at ——— dollars.

4th. The expenses and damages in consequence of laying out, altering and discontinuing roads during the year ending as aforesaid, amount to the sum of ——— dollars, as follows:

Total expenses in laying out road leading from (*here describe the road,*) § 7.00
Damages allowed on same, 40.00

Total expenses in altering and discontinuing part of road from (*here describe the road,*) 8.00
Damages allowed on same, 50.00

5th. We have received of the collector of the town, up to the time of rendering this account, the sum of eighty-four dollars, (\$84.00,) and have paid out the same as follows:

Paid to A. B., C. D., and E. F., for three days' labor, each, at \$1.00 per day, in repairing highways at (*state location,*) §9.00
Paid to *John Carpenter*, in full on his contract for building bridge at (*state location of bridge,*) 75.00

§84.00

(*If any balance remain, say:*) Leaving in our hands a balance of ———, on account of money received from the collector.

Given under our hands this ——— day of ———, A. D. 18—.

H. R. FARRMAN, } Commissioners
CHRISTOPHER P. WEBB, } of
GARDNER M. HASTINGS, } Highways.

A town has no authority, however, to raise money to aid in the construction of a road which by law is to be made at the expense of the county; and consequently a tax laid by the town for the purpose of collecting the money is illegal and void. So held in *Massachusetts*.—*Pearson v. Gashen*, 17 Pick., 396.

twenty cents on each one hundred dollars' worth, as valued on the assessment roll of the previous year.

3d. They shall affix to the name of each person named in the lists, so furnished by the overseers, the number of days assessed to each person for highway labor, personal property, and also a description of each tract of land, and the name of the owner, if known, with the valuation thereof, as taken from the assessment roll of the previous year, and the amount of road tax assessed thereon, in a separate column. The lists so prepared shall be subscribed by the commissioners and deposited with the town clerk, to be filed in his office.¹

Number of days
to be affixed to
list.

Description and
value of land.

¹Form of Order of Commissioners assessing highway labor and road tax.

Lake County,
Town of Waukegan, } ss.

At a meeting of the commissioners of highways of said town of Waukegan at the town clerk's office, in said town, on the — day of —, A. D. 18—, the said commissioners having proceeded to ascertain, estimate, and assess the highway and road tax to be performed and paid in said town the ensuing year, do estimate and assess two days' highway labor to each and every male inhabitant in said town, liable to be assessed for highway labor, to be performed in said town the ensuing year; and we do assess a road tax of twenty cents on each one hundred dollars worth of real estate and personal property, liable to taxation of said town, as valued on the assessment roll of the past year, to be paid in said town the ensuing year.

Witness our hands this — day of —, A. D. 18—.

NORMAN PHILLIPS, } Commissioners
WM. C. NEWMAN, } of
JAMES WISEMAN, } Highways.

Form of List of Assessment of highway labor.

Lake County,
Town of Fremont, } ss.

We, the commissioners of highways of the said town of Fremont, having proceeded to ascertain, estimate and assess the highway labor and road tax to be performed and paid in said town the ensuing year, have made out the estimate and assessment for road district number one, in said town, to wit:

The inhabitants of said town, assigned to said road district, are assessed for highway labor as follows, viz.:

NAMES.	NO. OF DAYS.
Hurlburt Swan,	2
Isaac H. Smith,	2

Given under our hands this — day of —, A. D. 18—.

ROBERT LYON, } Commissioners
HOBERT E. SWAN, } of
THOMAS H. PAYNE, } Highways.

The town clerk will make a copy of the foregoing list.

ROBERT LYON, } Commissioners
HOBERT E. SWAN, } of
THOMAS H. PAYNE, } Highways.

Form of List of Assessment of road tax,

Lake County,
Town of Fremont, } ss.

We, the commissioners of highways of the said town of Fremont, having

Clerk make
copies of list.
1861.

Copies delivered
to overseers.

Subsequent addi-
tions to the lists.

Credit to persons
living on private
roads.

Posting of notices
after amount of
road tax is filed.
1861.

§ 9. The commissioners shall direct the clerk of the town to make a copy of each list, and shall subscribe such copies; after which they shall cause the several copies to be delivered to the respective overseers of highways of the several districts in which the highway labor is assessed; one copy for each overseer shall contain the name and number of days assessed to each person, the other the real and personal property road tax.

§ 10. The names of persons left out of any such list, and of new inhabitants, shall from time to time, be added to the several lists, and they shall be rated by the overseers in the same proportion to work on the highways as others rated by the commissioners on such list, subject to an appeal to the commissioners.

§ 11. It shall be the duty of commissioners of highways of each town to credit such persons as live on private roads and work the same so much, on account of their assessment, as such commissioners shall deem necessary to work such private road, or to annex such private road to some of the highway districts.

§ 12. The town clerk shall, within ten days after the commissioners of highways have filed in his office the amount of road tax assessed on the real and personal estate of the towns, post a notice on the outer door of the house where the town meeting was last held, stating the amount of road tax assessed on each one hundred dollars' worth of the real and personal estate of the town, and that all persons interested can pay the same in labor on the highways, under the direction of the overseer of highways, in the district where the land or personal property is situated.¹

proceeded to ascertain, estimate, and assess the highway labor and road tax to be performed and paid in said town the ensuing year, have made out the estimate and assessment of the lands situated in road district number one, with the names of the owners so far as known for road tax, as valued on the assessment roll of last year, to wit, A. D. 18—, as follows:

NAME OF OWNER.	DESCRIPTION OF LANDS.	NO. ACRES.	VALUE PER ACRE.	TOTAL VALUE.	AM'T TAX.	VALUE OF PER. PROP.	AM'T OF TAX.	TOTAL TAX.
Hurlburt Swan,	N. W. $\frac{1}{4}$ Sec. 11.	160	\$20.00	\$3,200.00	\$6.40c.	\$1,600.00	\$8.20	\$9.60
James S. Clark,	S. W. $\frac{1}{4}$ " "	160	20.00	3,200.00	6.40c.	800.00	1.60	8.00

Given under our hands this — day of —, A. D. 18—,

ROBERT LYON, }
HOBERT E. SWAN, } Commissioners
THOMAS H. PAYNE, } of
Highways.

The town clerk will make a copy of the foregoing list.

ROBERT LYON, }
HOBERT E. SWAN, } Commissioners
THOMAS H. PAYNE, } of
Highways.

NOTE.—It seems that the personal property road tax of an individual, if not paid, should be returned with his land tax, to be levied upon the land, and collected and paid over to the commissioners the same as the land tax. See *post*, sections 43 and 46. Where the individual has no land assessed the remedy for the recovery of his personal property tax, is, no doubt, by an action in the name of the town, to be prosecuted in the same manner as ordinary actions in favor of the town; and this is an appropriate remedy to enforce the payment of a tax, without regard to the remedy given by distress.—See *Rynn v. Gallatin Co.*, 14 Ills., 83. *Glancey v. Elliott, Id.*, 458. *Dunlap v. Gallatin Co.*, 15 Id., 9.

¹Form of Notice of assessment of property tax.

Notice is hereby given that the amount of road tax assessed on each one

§ 13. If the commissioners of highways shall refuse or neglect to perform any of the duties enjoined on them by this act they shall severally forfeit, to the town, not less than five nor more than fifty dollars, and may be proceeded against, severally, for the recovery of said forfeiture.

BRIDGES.

§ 14. Whenever it shall be necessary, in any town, to build a bridge, the cost of which shall be more than can be raised by ordinary road taxes, the commissioners of highways shall lay before the town auditors of such town a statement of the amount of money necessary for the construction thereof, and said board of auditors shall certify the same to the board of supervisors of the county in which such town is situated. The amount so certified shall, by said board of supervisors, be levied on the taxable property of such town and collected by the collector thereof, in the same manner as other taxes are levied and collected.¹

§ 15. The commissioners of highways of each town may, when hundred dollars² worth of real estate of the town of *McHenry*, in the county of *McHenry*, for the ensuing year, is *twenty cents*, and that all persons interested can pay the same in labor on the highways, under the direction of the overseers of highways in the districts where the land is situated.

ALEX. H. NIXON, Town Clerk.

Dated at *McHenry*, May 1st, 18—.

¹*Form of Statement by Commissioners of amount necessary to build a Bridge.*

Statement of the amount of money necessary for the construction of a bridge in the town of *Wauconda*, in the county of *Lake*, over the ——— river, the building of which is deemed necessary.

The total cost of building said bridge will be	\$1,000.00
The amount which can be raised by ordinary road taxes is	500.00

Leaving a balance necessary for the construction thereof of	\$500.00
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Dated this — day of —, A. D. 18—.

THOMAS DILLON,	} Commissioners of Highways.
SETH HILL,	
JOSEPH WALTON,	

Form of Certificate of Auditors to Statement of amount for building bridge.

To the board of supervisors of the county of *Lake*, state of Illinois.

We, the board of town auditors of the town of *Wauconda*, in said county, do hereby certify: that it appears from a statement made by the commissioners of highways of said town bearing date the — day of —, A. D. 18—, and laid before us, that the cost of building a certain bridge necessary in said town, over the ——— river, is more than can be raised by ordinary road taxes, and that the further sum of *five hundred* dollars is necessary for the construction thereof.

In witness whereof, we have hereunto set our hands this — day of — A. D. 18—.

ANDREW COOK,	} Town Auditors.
GEO. J. TOWER,	
JUSTUS BANGS,	
CLARK GALE,	

1861. they shall deem it advisable, put up and maintain, in conspicuous places, at each end of any bridge in such town, maintained at the public charge, a notice with the following words, in large characters: "Five dollars fine for riding or driving on this bridge faster than a walk."
- Notice to prohibit. 1861. § 16. Whoever shall ride or drive, faster than a walk, over any bridge, upon which such notices shall have been placed and shall then be, shall forfeit to the town, for every such offense, the sum of five dollars.
- Penalty. 1861. § 17. Whoever shall purposely injure any bridge or causeway, maintained at the public charge, shall, for every offense, forfeit to the town treble damages.
- Injury to bridge. 1861. § 18. Whenever any adjoining town shall be liable to make or maintain any bridge or bridges over any stream dividing such towns, or on the line dividing such towns, such bridge or bridges shall be built and repaired at the equal expense of said towns, without reference to the town lines.
- Bridges upon town boundaries. 1861. § 19. For the purpose of building or keeping in repair such bridge or bridges, it shall be lawful for the commissioners of highways of said adjoining towns to enter into joint contract; and such contracts may be enforced, in law or equity, against such commissioners, jointly, the same as if entered into by individuals; and said commissioners may be proceeded against, jointly, for any neglect of duty in reference to such bridge or bridges.¹
- Joint contracts for building. 1861. § 20. If the commissioners of highways of either of such towns, after reasonable notice in writing, from the commissioners of highways of any other of such towns, shall neglect or refuse to rebuild or repair any such bridge or bridges, it shall be lawful for the commissioners so giving notice to make or repair the same, and then to maintain a suit, in their official capacity, against said com-
- Neglect to perform contract. 1861.
- Suit maintained. 1861.

¹*Form of Contract between Commissioners of Highways of adjoining towns, for building bridge.*

This contract made and entered into this — day of —, A. D. 18—, by and between A. B., C. D. and E. F., commissioners of highways of the town of *Byron*, in the county of *Ogle* and state of *Illinois*, of the one part, and G. H., I. J. and K. L., commissioners of highways of the town of *Marion*, in said county, being adjoining towns, witnesseth, that said towns having become liable to make a bridge across *Rock* river, a stream dividing such towns, said commissioners, in consideration of the premises and of the agreement hereinafter set forth, to be kept and performed by the respective parties, do contract and agree, that said bridge shall be built over said river where the road leading from —, to —, crosses the same, on the line of the center of said road: that said bridge shall be of the following plan and materials, to wit: (*Set forth briefly the plan and materials, where such is made part of the contract.*) That the building of said bridge shall be let by contract within one month from the date hereof, to the lowest bidder, who shall be required to complete the same within *three* months from the date of accepting his bid. That the letting of said contract, the prosecution of the work and acceptance thereof shall be under the joint supervision and direction of said parties hereto, and their successors in office, and that the commissioners of each town will promptly furnish and pay over the due proportion of money that their said town may be liable for, in building said bridge, as the payments shall become due upon the contract for building thereof.

missioners so neglecting or refusing to join in such making or repairing; and in such suit the plaintiff shall be entitled to recover one-half of the expenses of such building or repairing, with costs of suit and interest.¹

§ 21. Any judgment recovered against the commissioners of highways, in their official capacity, under the provisions hereof, shall be a charge on said town, and collected in the same manner as other town charges, except in cases when the court, before which the judgment shall be recorded, shall certify that the neglect or refusal of said commissioners was willful or malicious; in which case said commissioners shall be personally liable for such judgment, and the same may be enforced against them in the same manner as against individuals. Judgments against commissioners a town charge. 1861.
Exception.

§ 22. Any persons owning lands on both sides of any public highway shall be entitled to the privilege of making a crossing under said highway for the purpose of letting his or her cattle and other domestic animals cross said road: *provided*, said person shall erect at his own expense a good and substantial bridge, with secure railing on each side thereof, and build an embankment of easy grade on either side of said bridge. Said bridge to be not less than sixteen feet wide, to be approved by the commissioners, Crossings for cattle. 1861.
Proviso.

In witness whereof, the said parties have hereunto set their hands and seals, the day and year first above written.

In presence of

}	A. B.,	[SEAL.]
	C. D.,	[SEAL.]
	E. F.,	[SEAL.]
	Commissioners of Highways of the town of <i>Byron</i> .	
	G. H.,	[SEAL.]
}	I. J.,	[SEAL.]
	K. L.,	[SEAL.]
	Commissioners of Highways of the town of <i>Marion</i> .	

NOTE.—The foregoing form can be varied or enlarged to suit the circumstances of particular cases, or the desire of parties.

¹*Form of Notice to Commissioners of Highways of adjoining towns to join in performing contract to build bridge.*

To A. B., C. D. and E. F., commissioners of highways of the town of *Byron*, county of *Ogle*:

You are hereby notified to fulfill on your part, the contract entered into by you, (or by your board) with the undersigned commissioners of highways of the town of *Marion* in said county, (or with the commissioners of highways of the town of *Marion* in said county,) the — day of —, A. D. 18—, for building a bridge over *Rock* river, at the point where the road leading from — to —, crosses said river, by (here set forth the performance required as stipulated in the contract,) and that unless you shall so perform on your part within — days from this date, the undersigned, said commissioners of highways, will proceed as empowered by law, and complete said bridge, and will claim of you the due proportion of the expense thereof, chargeable to your town.

Dated at *Marion*, this — day of —, A. D. 18—.

E. F.,	}	Commissioners of Highways.
G. H.,		
I. J.,		

and to be kept constantly in good repairs by the owner or occupant of said land, subject to the direction of said commissioners of highways.

OVERSEERS OF HIGHWAYS.

Duties of overseers of highways.

§ 23. It shall be the duty of overseers of highways in each town:

1st. To repair and keep in order the highways within their several districts for which they shall have been elected.¹

2d. To warn all persons from whom road labor is due to work on the highways, at such times and places, within their several districts, as they may think proper.²

3d. To collect all fines and commutation money, and to execute all lawful orders of the commissioners of highways.

4th. To deliver to the clerk of the town, within sixteen days after their election or appointment, a list, subscribed by such overseers, of the names of all the inhabitants in his road district, who are liable to work on the highways.³

Vacancy in office of overseer.

§ 24. If any person, chosen or appointed to the office of overseer of highways, shall refuse to serve, or if his office shall become vacant, the commissioners of highways of the town shall, by warrant, under their hands, appoint some other person in his stead; and the overseer so appointed shall have the same powers, be subject to the same orders, and liable to the same penalties, as overseers chosen at the town meeting.⁴

Appointment to be filed.

§ 25. The commissioners making the appointment shall cause such warrant to be forthwith filed in the office of the town clerk, who shall give notice to the person appointed, as in other cases.

(1) An overseer of highways is bound to remove obstructions from the highways within his district, although not specially directed to do so by the commissioners.—*McFadden v. Kingsbury*, 11 Wend., 637.

(2) Labor assessed for highway purposes can only be bestowed upon such roads or highways as are established by law. When lands are dedicated by the owner to public use as streets, they do not become public highways until accepted as such by the public authorities.—*Oswego v. Oswego Canal Co.*, 2 Selden, 263. Townships under the law of this state could probably only accept of such dedication by the action of commissioners of highways, upon proper petition, as in other cases of roads or highways.

³Form of Overseer's List of inhabitants liable to work on the highways.

Stephenson County, } ss.
Town of Buckeye, }

I, J. H. Adams, overseer of highways for road district number —, in said town of Buckeye, do certify that the following is a true and correct list of all the inhabitants in said road district, who are liable to work on the highways, viz.: (Here insert the names.)

Dated this — day of —, A. D. 18—.

J. H. ADAMS,
Overseer of Highways.

⁴Form of Appointment of Overseers of Highways in case of vacancy.

Winnebago County, } ss.
Town of Butler, }

Whereas, a vacancy has occurred in the office of overseer of highways, for road district No. —, in said town, by reason of the removal (or refusal to serve, or death, as the case may be,) of — — elected to said office —

§ 26. Every overseer of highways, who shall refuse or neglect to perform any of the duties hereinbefore enumerated or which may be lawfully enjoined on him by the commissioners of highways of his town, shall for every such refusal or neglect, forfeit the sum of ten dollars, to be sued for by the commissioners of highways of the town, and, when recovered, to be applied by them in making and improving the roads and bridges therein.¹

HIGHWAY LABOR AND ASSESSMENT.

§ 27. It shall be the duty of overseers of highways to give at least three days' notice to all persons assessed to work on highways and residing within the limits of their respective districts of the time and place when and where they are to appear for that purpose, and with what implements; but no person being a resident of the town, shall be required to work on any highway other than in the district in which he resides, except he resides in a district on a town line, which district belongs to an opposite town, and unless he shall elect to work in some district where he has any land; and in such case he may, with the approbation of the commissioners of highways, apply the work assessed in respect to such land in the district in which the same is situated.²

§ 28. Every person, liable to work on the highways, shall work the whole number of days for which he shall have been assessed; but every such person, other than an overseer of highways, may elect to commute for the same, or for some part thereof, at the rate of seventy-five cents per day; in which case such commutation money shall be paid to the overseer of highways of the district in which the person commuting shall reside, to be applied and ex-

Now, therefore, we, the undersigned, commissioners of highways of said town, do hereby appoint *C. M. Priesely*, to be overseer of highways of and for said road district No. —, in said town, to fill said vacancy.

Given under our hands this — day of —, A. D. 18—.

EZRA M. MILLER, } Commissioners
ALMON WHEELER, } of
JAMES B. JOHNSON, } Highways.

The form of notice used in case of appointment of town officers, may be used in this case, with little variation, to suit the occasion.—See *ante*. p. 41.

(1) An overseer of highways is not liable to a private action for any error of judgment in the execution of his trust. He is only responsible for any neglect or refusal under the sanction of the act which subjects him in such case to a penalty.—*Freeman v. Cornwell*, 10 Johns. 470

If, however he acts maliciously or oppressively, it is otherwise.—5 Johns., 125.

(2) This notice is not required by the law to be reduced to writing, but should the overseer think to give notice in writing, he can adopt the following form :

Form of Notice to person to work on the Highway.

To Mr. *Daniel Rose* :—

SIR:—You having been assessed a poll tax of two days, to be worked on the highways in road district number —, in the town of *Young Hickory*, are hereby notified to appear with (*state with what implements*) on the — day of —, 18—, at — o'clock in the forenoon, at (*state the place*) for the purpose of working said highway poll tax.

Dated this — day of —, 18—.

JOHN S. GARDNER, Overseer of Highways.

	<p>pended by such overseer in the improvement of the roads and bridges in the same district.</p> <p>§ 29. Any person intending to commute for his assessment, or any part thereof, shall, within twenty-four hours after he shall be notified to appear and work on the highways, pay the commutation money for the work required of him by such notice; and the commutation shall not be considered as complete until such money be paid.</p> <p>§ 30. Every overseer of highways shall have power to require a team or a cart, wagon or plow, with a pair of horses or oxen and a man to manage them, from any person having the same within his district, who shall have been assessed two days, or more, and who shall not have commuted for his assessment; and the person furnishing the same, upon such requisition, shall be entitled to a credit of two days for each day's service therewith.</p> <p>§ 31. Every person assessed to work on the highways, and warned to work, may appear in person, or by an able bodied man as a substitute, and the person or substitute so appearing shall actually work eight hours in each day, under a penalty of twelve and half cents for every hour such person or substitute shall be in default, to be imposed, as a fine, on the person assessed.</p> <p>§ 32. If any person, or his substitute, shall, after appearing, remain idle or not work faithfully or hinder others from working, such offender shall, for every offense, forfeit to the town the sum of one dollar.</p> <p>§ 33. Every person so assessed and duly notified, who shall not commute and who shall refuse or neglect to appear, as above provided, shall forfeit to the town, for every day's refusal or neglect, the sum of one dollar. If he was required to furnish a team, carriage, man or implements, and shall refuse or neglect to comply, he shall be fined as follows; 1st: For wholly omitting to comply with such requisition, three dollars for each day. 2d: For omitting to furnish a cart, wagon or plow, one dollar for each day. 3d: For omitting to furnish a pair of horses or oxen, one dollar for each day. 4th: For omitting to furnish a man to manage the team, one dollar for each day.</p> <p>§ 34. It shall be the duty of every overseer of highways, within six days after any person assessed and notified shall be guilty of any refusal or neglect, for which a penalty or fine is prescribed in this act, unless a satisfactory excuse shall be rendered to him for such refusal or neglect, to make complaint, on oath, to any justice of the peace of the county.¹</p> <p>§ 35. The justice to whom such complaint shall be made shall forthwith issue a summons, directed to any constable of the county, requiring him to summon such delinquent to appear, forthwith, before such justice, at some place to be specified in the summons, to show cause why he should not be fined according to law, for</p>
Time allowed to commute.	
Teams and tools to be furnished.	
Work in person or by substitute.	
Hours of labor.	
Penalty for idleness.	
1861.	
Fines and forfeitures for neglect to appear and work.	
1861.	
Complaint against delinquent.	
1861.	
Justice to issue summons.	
1861.	

(1) This complaint need not necessarily be in writing; it will be a sufficient compliance with the law, if made on oath, in which case the complaint may be recited in the summons.

such refusal or neglect, which summons shall be served personally or by leaving a copy at his personal abode.¹

§ 36. If, upon the return of such summons, no sufficient cause shall be shown to the contrary, the justice shall impose a fine, as is provided in this act, for the offense complained of, and shall forthwith issue a warrant, under his hand and seal, directed to any constable of the town where such delinquent shall reside, commanding him to levy such fine, with the costs of proceedings, of the goods and chattels of such delinquent.²

May impose fine
and issue warrant
for collection.

§ 37. The constable to whom such warrant shall be directed shall forthwith collect the moneys therein mentioned. He shall pay the fine, when collected, to the justice of the peace who issued

Duty of constable.

¹*Form of Summons for refusing to work.*

STATE OF ILLINOIS, }
Jo Daviess County, } ss.

The people of the state of Illinois, to any constable of the town of *Rush*, in the aforesaid county, greeting:—

Whereas, complaint hath this day been made before me, *Samuel Oxander*, one of the justices of the peace of said town, upon oath by *Solon Way*, overseer of highways in road district number —, in said town, that *John Smith*, who has been assessed for highway labor in said district, and has been duly notified to perform such work, has neglected to appear in pursuance of such notice, either in person or by an able bodied man as a substitute, together with a pair of oxen as required by said notice (or, as the case may be) and perform such labor; You are therefore hereby commanded to summon the said *John Smith* forthwith to appear before me at my office in said town, to show cause why he should not be fined according to law, for such refusal or neglect, as in said complaint alleged.

Given under my hand and seal this — day of —, A. D. 18—.

SAMUEL OXANDER, [SEAL.]
Justice of the Peace.

²*Form of Warrant for collecting fine.*

STATE OF ILLINOIS, }
Jo Daviess County, } ss.

The people of the state of Illinois, to any constable of the town of *Rush*, in the county aforesaid, greeting:—

Whereas, complaint was lately made to me, *Samuel Oxander*, one of the justices of the peace of said town, by *Solon Way*, overseer of highways for road district number —, in said town, that *John Smith*, who was assessed, &c., (*recite the complaint*,) whereupon a summons was issued by me requiring the said *John Smith* to appear before me at my office in said town, forthwith, to show cause why he should not be fined for such neglect, (*or refusal, or as the case may be*,) which summons was duly served and returned to me by a constable of said town, and the said *John Smith*, not having shown any sufficient cause to the contrary, I have imposed a fine of *three* dollars on him for his offense, complained of as aforesaid, and taxed the cost of the proceedings on said complaint at — dollars and — cents. You are therefore, hereby commanded to levy the said fine, with the costs of proceedings, of the goods and chattels of the said *John Smith*, and make returns to me without delay, and have you then and there the amount of said fine and costs.

Given under my hand and seal this — day of —, A. D. 18—.

SAMUEL OXANDER, [SEAL.]
Justice of the Peace.

the warrant, who is hereby required to pay the same to the overseer who entered the complaint, to be by him expended in improving the roads and bridges in the district of which he is the overseer.

Penalty set off. § 38. Every penalty collected for refusal or neglect to appear and work on the highways shall be set off against his assessment upon which it was founded, estimating every dollar collected as a satisfaction for one day's work.

Excuses. § 39. The acceptance by an overseer of any excuse for refusal or neglect shall not, in any case, exempt the person excused from commuting for or working the whole number of days for which he shall have been assessed during the year.

Compensation of overseer. § 40. Each and every overseer of highways shall be entitled to one dollar per day, to be paid out of fines and commutation money, for every day he is necessarily employed in the execution of his duties as overseer, beyond the amount of his own highway labor and road tax, the number of days to be accounted to and audited by the commissioners of highways: *provided*, that when there is no funds from fines and commutations the commissioners may pay the overseers out of other funds in their hands if they think proper.

Notice by overseer to work property road tax. 1861. § 41. It shall be the duty of the overseer of highways to warn all residents of his district, against whom a land or personal property road tax is assessed, giving them three days' notice, to work out the same upon the highways, and he shall receive such tax in labor, from every able-bodied man, or his substitute, at the rate of seventy-five cents per day; and any person, or his agent, may pay such tax in road labor, at the rate of seventy-five cents per day, or in that proportion for a less amount: *provided*, that any person may elect to pay such tax to the overseer in money.¹

Proviso. § 42. It shall be the duty of the overseer of highways, when such land tax has been paid, either in money or labor, to write the word "paid" distinctly against each name or tract on his list, on which the same has been paid.

Duty of overseer when tax is paid. § 43. Every overseer of highways shall deliver to the supervisor of his town, at least five days previous to the annual meeting of the board of supervisors, the list furnished by the commissioners of highways, containing the land and personal property road tax, with an affidavit thereon, sworn to before the supervisor of the town or some justice of the peace of the county, that on all tracts of land on such list, opposite which the word "paid" is not written, such tax is due, and remains unpaid, according to the best of his belief and knowledge.²

Delivery of list to supervisor. 1861.

Affidavit that tax is paid.

(1) When the overseer of highways desires to give notice in writing, to warn persons to work out property tax, the form heretofore given for notice in case of poll tax can be used by varying to suit the occasion. See *ante*, p. 75.

² *Form of Affidavit of Overseer of Highways upon Return of List to Supervisor.*

STATE OF ILLINOIS, } ss.
Lake County, }

James Wiseman, overseer of highways for road district number —, in the

§ 44. If any overseer shall refuse or neglect to deliver such list to the supervisor, as provided in the last preceding section, or shall neglect or refuse to make the affidavit, as therein directed, he shall, for every such offense, forfeit the sum of five dollars, and also the amount of tax or taxes remaining unpaid, to be recovered by the commissioners of highways of the town, and to be applied by them in improving the roads and bridges of such town. Penalty for refusal to deliver list or make affidavit.

§ 45. It shall be the duty of the supervisors of the several towns to receive the list of the overseers of highways, when delivered pursuant to the preceding section, and to lay the same before the supervisors of the county. List to be laid before supervisors.

§ 46. It shall be the duty of the board of supervisors to cause the amount of such averages of road tax to be levied on the lands so returned, and to be collected in the same manner that the contingent charges of the county are levied and collected, and to order the same, when collected, to be paid over to the commissioners of highways of the town, to be by them applied to the construction of roads and bridges. Supervisors to levy road tax. Tax how applied.

§ 47. It shall be the duty of every overseer of highways, to have at least three-fourths of the road labor assessed in his district worked out or actually expended on the highways, previous to the first day of October in every year. Labor when to be worked.

§ 48. Every overseer of highways shall, on the second Tuesday next preceding the time of holding the annual town meeting in his town, within the year for which he is elected or appointed, render to one of the commissioners of highways of the town, an account, in writing, containing:¹ Report of overseer. Contents.

1st. The names of all persons assessed to work on highways in the district of which he is overseer.

town of *Waukegan*, in said county, being duly sworn, doth depose and say, that on all tracts of land described in the annexed list, opposite which the word "*paid*" is not written, such tax is due and remains unpaid, according to the best of his belief and knowledge.

JAMES WISEMAN.

Subscribed and sworn to before me, this — }
day of —, A. D. 18—. }
JOSEPH L. WILLIAMS, Justice of the Peace. }

NOTE.—The overseer should write the word "*paid*" against the amount of personal property tax of each individual, when it has been paid, the same as in case of payment of the land tax, and he ought properly to add the following clause to the foregoing affidavit, although it seems not to be absolutely required by the law:

"And further, that the personal property tax, set forth in said list, against which the word '*paid*' is not written, remains likewise unpaid, according to his belief and knowledge."

¹ Form of Overseer's Annual Account.

Town of McHenry, ss.

I, *Leonard Gage*, overseer of highways for road district number —, in said town, hereby render to *H. N. Owen*, one of the commissioners of highways of said town, the following account, to wit:

1st. The names of all persons assessed to work on the highways in said district, are as follows:

(Here insert the names.)

2d. The names of all those who have actually worked on the highways, with the number of days they have actually worked.

3d. The names of all those who have been fined, and the sums in which they have been fined.

4th. The names of all those who have commuted, and the manner in which the moneys arising from fines and commutations have been expended by him.

5th. The amount of uncollected road tax, which he has returned to the supervisor of the town, as required in section forty-three of this article.

Overseer to pay over money.

§ 49. Every such overseer shall, also, then and there pay to the commissioners all moneys remaining in his hands unexpended, to be applied by the commissioners in making and improving the roads and bridges in the town, in such a manner as they shall direct.

Neglect to report or pay over money.

§ 50. If any overseer shall refuse or neglect to render such account, or, if having rendered the same, he shall refuse or neglect to pay any balance which may then be due from him, he shall, for every such offense, forfeit the sum of five dollars, to be recovered, with the balance of the moneys remaining in his hands, by the commissioners of highways of the town, and to be applied in making and improving the roads and bridges.

Penalty.

It shall be the duty of the commissioners to prosecute for such penalty in every instance in which no return is made.

Commissioners to prosecute.

2d. The names of all those who have actually worked on the highways, with the number of days they have actually worked, are as follows:

Names.		No. of days.
<i>W. P. Melendy,</i>		2
<i>Oliver Owen,</i>		2

3d. The names of all those who have been fined, and the sums in which they have been fined, are as follows:

Names.		Am't of fine.
<i>John Doe,</i>		\$3 00

4th. The names of all those who have commuted, and the manner in which the money arising from fines and commutations have been expended by me, are as follows:

Names of persons commuting.		Amount.
<i>Geo. Gage,</i>		\$2 25

I have received for fines and commutations as above set forth, the sum of \$—, of which amount I have expended the sum of \$— in (*here state how the money has been expended,*) and no moneys remain in my hands unexpended, (*or the sum of \$— remains in my hands unexpended.*)

5th. The amount of uncollected land road tax which I have returned to the supervisor of the town as required by law, is — dollars, and the amount of uncollected personal property road tax, thus returned, is — dollars.

LEONARD GAGE,

Overseer of Highways of District No. —

Dated this — day of —, 18—.

[The overseer of roads of the several towns are hereby authorized to enter upon any unimproved land most convenient, and to cut and haul away timber, or to quarry and haul rock, gravel, sand or earth which may be necessary for the purpose of building or repairing any bridge or causeway in their respective road districts: *provided*, that such overseers shall not take away timber already cut, or rock or gravel already quarried for another purpose, without leave from the owner or his agent: *and provided also*, that unless the owner or his agent shall first consent to the cutting of timber or the quarrying of stone, or the taking of gravel, sand or earth, the overseers of roads shall call upon two discreet householders to value the materials about to be used, and if the owner of the materials shall think proper, he or she may choose two other discreet householders to act with such as may be chosen by the overseer of highways, and if they can not agree the four shall choose a fifth as umpire, and the five, or a majority of them, shall make out their award, under their hands and seals, and deposit it with the clerk of the town in which such bridge is situated, who shall file the same in his office. Said award shall be final and conclusive of the amount of damages sustained by such person, and the amount so awarded shall be audited, levied and collected in the same manner provided in the next preceding section of this act, [section 14 of this article,] and the overseer of highways shall be authorized and warranted, and is hereby fully empowered, to take such materials as aforesaid, for the purposes contemplated in this section, as soon as such award shall be made.¹]

Taking of timber, gravel, &c.

Proviso.

Further proviso.

Value how appraised.

Award to be final.

How paid.

(1)NOTE.—This section is from the amendatory act of 1854; in revising the Township Act it was inadvertently omitted, it nevertheless is not repealed, but remains in full force, and is, therefore, inserted here in its proper order.

Form of Award for taking Gravel, &c., from unimproved land, for bridge or causeway.

Kendall County, }
Town of Neausay, } ss.

Whereas, *David Smith*, overseer of highways of district No. —, in the town of *Neausay*, is desirous of taking a quantity of sand and gravel from the land of *G. W. Kellogg*, the same being unimproved land, for the purpose of erecting and constructing a causeway, (or bridge) in the public highway adjacent to said land, and the said *David Smith* and *G. W. Kellogg*, being unable to agree upon the damage for taking away the said sand and gravel, and the said *G. W. Kellogg*, not consenting to the thus taking the same, the said *David Smith* called upon the undersigned, S. and T., and the said *G. W. Kellogg* called upon the undersigned, L. and M., all being householders, to value the said sand and gravel about to be used as aforesaid, and the undersigned have been upon and viewed the premises, and having heard the parties, do award and determine as follows, to wit:

That the value of the said sand and gravel about to be used, as aforesaid, is the sum of — dollars, and that the said *G. W. Kellogg* is entitled to that sum therefor.

Witness our hands and seals this — day of —, A. D. 18—.

S., [SEAL.]
T., [SEAL.]
L., [SEAL.]
M., [SEAL.]

LAYING OUT, ALTERATION AND DISCONTINUANCE OF ROADS.

The alteration,
discontinuance
and laying out
of roads.

§ 51. The commissioners of highways may alter or discontinue any road, or lay out any new road, when petitioned by any number of legal voters, not less than twelve, residing within three miles of the road so to be altered, discontinued or laid out. Said petition shall set forth, in writing, a description of the road, and what part thereof is to be altered or discontinued; and, if for a new road, the names of owners of lands, if known, over which the road is to pass; the points at which it is to commence; its general course, and the place at or near where it is to terminate.¹

In case the four arbitrators chosen cannot agree, whereby they choose a fifth as umpire, the foregoing form should be varied by adding the following, after the words "to be used as aforesaid," say,

"And the said S., T., L. and M., having been upon and viewed the premises, and heard the parties and being unable to agree, they did choose N., as umpire, whereupon the undersigned do award, &c., (conclude as aforesaid.)"

¹Form of Petition for the alteration of a road.

To the commissioners of highways of the town of &c.

The undersigned legal voters residing within three miles of the road known as (*describe the road*), do hereby petition you to alter said road, (or a portion of said road,) as follows: commencing at (*state the place of commencing*) in said town of — and running the line of said road as follows: (*state the manner in which the alteration of the line is desired*), and your petitioners pray that you will proceed and alter said road accordingly.

Dated at —, this — day of —, 18—.

Form of Petition for discontinuance of road.

To the commissioners of highways of the town of &c.,

The undersigned legal voters residing within three miles of the road known as (*describe the road*) do hereby petition you to discontinue said road (or so much of said road as lies in said town, or the following portion of said road, (*describing the portion*), and your petitioners pray that you will proceed and discontinue said road accordingly.

Dated at —, this — day of —, 18—.

Form of Petition for new road.

To the commissioners of highways of the town of Avon, in the county of Lake, state of Illinois:

The undersigned legal voters residing within three miles of the route hereinafter mentioned and described for a road, do hereby petition to you to lay out a new road of the width of four rods, as follows: commencing at the village of Hainesville, in said town of Avon, at the north end of Gage street, and running from thence in a north-easterly direction, on the most eligible route to intersect the Fox river road, at or near the house of S. L. Emery. The names of the owners of lands over which the same is to pass are A. B., C. D., and E. F., and your petitioners pray that you will proceed to lay out said road and cause the same to be opened according to law.

Dated at Avon, this — day of —, A. D. 18—.

Where the owners of lands over which the road is to pass are not known, then that fact should be stated in the petition, which statement should be as follows:

"The names of the owners of lands over which said road is to pass are not known to your petitioners."

If a portion of the owners are known, and others not known, the statement can be as follows:

§ 52. Whenever any number of legal voters determine to petition the commissioners of highways for the alteration or discontinuance of any road, or laying out of any new road, they shall cause a copy of their petition to be posted up in three of the most public

Copy of Petition
to be posted.

"The names of the owners of lands over which said road is to pass, as far as known to your petitioners, are A., B., C., D., &c. The names of the owners of the following lands which said road is to pass over, to wit: (*here describe the lands with reasonable certainty,*) are unknown to your petitioners."

When a petition is presented to commissioners of highways for their action, they should first examine and see that it is regular upon its face, and that the law has in all respects been complied with, otherwise they should not act. The law requires, first,—that the petition shall be signed by not less than twelve legal voters residing within three miles of the road proposed to be altered, discontinued or laid out. Second,—if it is to alter or discontinue a road, the petition must set forth a description of the road which it proposes to alter or discontinue, and, if a new road, it must set forth the names of the owners of the lands, if known, over which it is to pass, the point at which it is to commence, its general course, and the place at or near where it is to terminate. Upon the first, the commissioners may satisfy themselves from actual knowledge, or upon proper inquiry. The second will appear from the petition itself.

NOTE.—The form here given for a petition for a new road can be easily varied to suit an application for alteration or discontinuance of a road. The subsequent forms will likewise be confined to the subject of laying out of new roads, but can also be easily varied to suit the occasion of altering, discontinuing or refusing to lay out.

It is no objection to a petition that more than twelve persons have signed it, and where twelve of the number are legal voters and reside within three miles of the road, it will be no objection because others whose names are upon the petition are not legal voters, or do not reside within three miles of the road. See *Carmel v. Judges of Putnam*, 7 Wend., 64.

The commissioners of highways can not proceed to lay out a highway except upon the application of twelve legal petitioners in writing, and an order made by them laying out a highway, without such petition, would be void.—*Harrington v. People*, 6 Barb., 607. *Wilians v. Horner*, 4 Wis. R., 129.

The applicants for a road designate the general course desired; the commissioners, the particular route, and the latter may make such variations as they may think proper, provided the departure is not of such a character as to induce the court to suppose that these officers had wholly disregarded the preliminary proceedings of the application.—*Hullock v. Woolsey*, 23 Wend., 325.

Where commissioners were appointed by an act of the legislature, to lay out a road on the most direct and eligible route, commencing at or near a certain village, and the road was laid out, commencing at a distance of sixty rods from the village, in a field where there was no road with which the new road could be connected, and the route instead of being the most direct and eligible, was, as expressed by the court, strikingly injudicious; yet notwithstanding these facts, the court awarded a peremptory mandamus to the commissioners of highways of the town, through which the road was laid, to proceed forthwith to open and work the road, as laid out by the state commissioners.—*People v. Collins*, 19 Wend., 56.

It was held in this case that the court would not collaterally review the doings of the commissioners, and hold as void the final determination made by them, in the exercise of their discretion or judgment. That the proper way of taking advantage of an error of this kind would be by certiorari or writ of error, if no other mode of appeal is given by statute. Hence we see the necessity of setting forth in the petition the points of commencement and termination of the road with a degree of certainty, that may show clearly the wishes of the petitioners, and thereby avoid disputes that may thereafter arise.

A highway must be laid out in conformity with the route described in the petition, otherwise the doings of the road commissioners will be without authority and invalid.—*Cole v. Town of Canaan*, 9 Porter R., 88.

The laying out of a highway upon inducements or considerations other than the public good is held to be illegal. Thus where a road was laid out by the commissioners, both because they thought the public good required it, and because G. and F. stated to them that if they would lay the road the petitioners would make it without any expense to the town; both of which were taken into consideration by the commissioners in deciding to lay the road, held by the court that a laying out upon such inducements would be clearly illegal.—*Gurnsey v. Edwards*, 6 Porter R., 224.

Commissioners of highways, in exercising their authority in respect to the laying out of highways, have no right to make conditions with parties interested. They have no right to say that, if they shall order a highway to be laid out, individuals shall assume or become bound to pay the expense.—*Webb and others v. Albertson and others*, 4 Barb.

The laying out of highways partakes of the character of judicial proceedings. It is a judicial act. *State v. Richmond*, 6 Porter, 232.

The commissioners of highways have no jurisdiction in the matter of laying out a highway which is not to be wholly within their town, unless under some express provision of law, as when the road is to be on the town line, and then they act in conjunction with the commissioners of the adjoining town.—See case of *Griffin's petition*, 7 Foster, (N. H.,) 343.

A public highway may be created by long use of land by the public for the purposes of a highway. But the way to become public must be used in such a manner as to show that the public accommodation requires the way and that it is the intention of the owner of the

places in the town twenty days before any action shall be had in reference to said petition.¹

Commissioners
when to act on
petition.

§ 53. Whenever the commissioners of highways shall receive a petition, in compliance with the two preceding sections, they shall, or a majority of them, within ten days after the expiration of the twenty days required in section [fifty] two of this article, personally examine the proposed alteration, discontinuance or route for the new road proposed to be laid out, and shall hear any reasons that may be offered for or against altering, discontinuing or laying out the same. If they shall be of opinion that such alteration, discontinuance or laying out shall be necessary and proper, and that the public interest will be promoted thereby, they shall grant the prayer of the petitioners, as hereinafter provided.²

Examine route.

Fix time to hear
reasons.
1857.

§ 54. The commissioners of highways, before determining to lay out any new road, or to alter or discontinue any old one, shall fix upon a time and place when and where they will meet to hear any reasons that may be offered for or against altering, discontinuing or laying out the same; and they shall cause written notices thereof to be posted up in three of the most public places in the town, at least eight days previous to the time of meeting.³

Post notices.

land to dedicate it to the public for that purpose, and the travel should be confined to the same place.—*State v. Nudd*, 3 Porter, (N. H.) See *Gardiner v. Tisdale*, 2 Wis. R., 153.

(1) The commissioners of highways should be satisfied that copies of the petition have been posted agreeable to this section of the law. An affidavit of the fact by the person who posted such copies, or who knows of the posting, may be considered sufficient. The affidavit should be endorsed on the petition, and may be in the following form:

Form of Affidavit for posting copies of road petition.

STATE OF ILLINOIS, } ss.
Lake County, }

Jacob N. Vandemark being duly sworn, doth depose and say, that he did on the — day of —, 18—, post up three copies of the within petition, as follows: (*here state the place of posting*), in the town of *Avon*, in said county, it being three of the most public places in said town.

JACOB N. VANDEMARK.

Subscribed and sworn to before me, }
this — day of —, A. D. 18—. }

ORLANDO S. WRIGHT, Justice of the Peace.

NOTE.—The law requires that a copy of the petition shall be posted; this will include the names of the petitioners subscribed to the petition. The law does not require a notice of the presentation of the petition, yet it may be proper to insert the following, at the head of the copies posted:

"Notice is hereby given that the following is a copy of a petition which will be presented to the commissioners of highways after the expiration of twenty days."

(3) It has been held in New York under a like statute, that where an application is made to commissioners of highways for laying out a road, &c., they may refuse to act, and should do so unless, in their opinion, the application presented to them is regular and in accordance with the requirements of the law. If they err in their refusal to act, the remedy by *mandamus* is at hand.—*Warnick v. Orange Co.*, 13 Wend., 432.

In laying out highways, the commissioners as well as the supervisors before whom the matter is brought on appeal, exercise special and limited jurisdiction, and although it may be presumed, till the contrary appear, that they have proceeded legally, yet their acts may be impeached by showing that they exceeded their powers.—3 Hill, 458.

²*Form of Notice of Commissioners, for time and place fixed for hearing reasons for or against road.*

HIGHWAY NOTICE.

A petition having been presented to the commissioners of highways of the

§ 55. Whenever the commissioners of highways shall determine to lay out any new road, or alter any old one, they shall cause a survey to be made, by a competent surveyor, who shall make a report to them of such survey, accompanied with a plat, particularly describing the route, by metes and bounds, courses and distances, and also the land over which the road passes. They shall incorporate such survey, accompanied with a plat, in an order, to be signed by them, declaring such road, so altered or laid out, to be a public highway; which order, together with the petition and report of the surveyor, shall be deposited with the town clerk, who shall note the time of filing the same. In case the commissioners shall determine not to alter, discontinue or lay out any road, in accordance with any petition to them presented, they shall note the fact on the back of said petition, and deposit it with the town clerk, who shall note the time of filing the same.¹

Cause survey to be made.

Report thereof.

Order to be made and filed. 1861.

Refusal to lay out, noted on petition.

town of *Goodale*, in the county of *Lake*, to lay out a new road, (or as the case may be,) upon the following described route, to wit: (*here describe the road as set forth in the petition.*) The said commissioners do hereby give notice that they have fixed upon the — day of —, 18—, at the hour of — o'clock — M., at the house of *J. D. Tower*, in said town, as the time and place they will meet to hear any reasons that may be offered for or against the laying out of said road, when and where all persons interested can be heard.

Dated at *Goodale*, this — day of —, 18—.

WM. C. HOWARD, } Commissioners
WM. KINES, } of
CALVIN LOBDELL, } Highways.

¹*Form of Surveyor's Report of Survey of Road.*

To the commissioners of highways of the town of *Libertyville*, in the county of *Lake*:

The undersigned having been employed by you to make a survey of a road beginning, &c., (*set forth the road as asked for in the petition.*) would report that the following is a correct survey thereof, as made by me under your directions, to wit: (*here set forth the survey, the course, distance, &c., as required by law.*) and that herewith is a correct plat of said road, according to said survey.

Dated this — day of —, A. D. 18—.

ORANGE G. RISLEY,
County Surveyor of *Lake County*.

Form of order of Commissioners of Highways laying out a new road.

Lee County, } ss.
Town of Sublette, }

Whereas, upon the application, in writing, of (*naming the petitioners*) twelve legal voters residing within three miles of the route hereinafter described, for a public road, a copy of their petition having been first duly posted up, as required by law, we, the commissioners of highways of said town, did, on the — day of —, A. D. 18—, personally examine the route proposed in said petition for a road, to wit: (*here describe the route as set forth in the petition*) and having before determining to lay out said road, fixed upon a time and place when and where we would meet to hear any reasons for or against laying out the same, and having caused written notices thereof to be posted up in three of the most public places in said town eight days previous to the time of such meeting, and having met at the time and place appointed for hearing such reasons, and having heard such as were offered, and being of the opinion that such laying out is necessary and proper, and that the public interest would

Damages sustained in opening roads, how ascertained.

Agreements and release.

§ 56. The damages sustained by reason of the laying out or opening or altering any road, may be ascertained by the agreement of the owners and the commissioners of highways, and unless such agreement be made or the owners of the land shall, in writing, release all claims to damages, the same shall be assessed in the manner hereinafter prescribed, before such road shall be opened, or worked, or used. Every agreement and release shall be filed in the town clerk's office, and shall forever preclude such owners of such lands from all further claims for such damages.¹

be promoted thereby, and having granted the prayer of said petitioners, and determined to lay out said road, we did, on the — day of —, A. D. 18—, cause a survey thereof to be made by a competent surveyor as follows: (*here incorporate the survey of the surveyor.*) It is therefore ordered and determined that a road be, and the same is hereby laid out and established according to said survey and the plat hereunto annexed and made part of this order, which is hereby declared to be a public highway, four rods wide, the line of said survey being the center of said road.

In witness whereof, we, the said commissioners, have hereunto set our hands this — day of —, A. D. 18—.

JOHN WOOD, } Commissioners
H. P. KOPSER, } of
THOS. S. ANGER, } Highways.

NOTE.—The form of order for altering or discontinuing a road will be nearly the same as that for laying out a new road; the foregoing form can therefore be easily varied to suit either of such occasions.

The foregoing form of order may be considered somewhat lengthy, but it contains no more than seems to be necessary. It should show that the commissioners acquired jurisdiction by a petition in due form of law, and that they subsequently pursued the law in laying out and establishing the road; it will then be received as *prima facie* evidence of the facts it contains.—See 6 Barb., 607. No particular form of words are necessary if the facts sufficiently appear.—*Tucker v. Rankin*, 15 Barb., 471. When the words used were “*have and do lay out a highway*,” it was held to import that the road was laid out at the date of the order.—*Fowler v. Mott*, 19 Wend., 204.

In laying out a road by the commissioners of highways, it is sufficient in the survey to run a single line, which will be intended as the center of the road, and where a specification is given will determine its width, in case a statement of the width should have been omitted in the order.—*Hanver v. Redhook*, 1 Wend., 310.

All the land within a highway fence is not necessarily subject to the right of way; and if not, it may be occupied by the owner; and if he places an obstruction there, and another is injured by it he is not thereby liable; and it is held, that though such obstruction be within the highway, he is not liable, unless the person injured exercised ordinary diligence to avoid it.—6 Cow., 189. Yet he would be otherwise liable for obstructing the highway.—See 5 Gilm., 371.

In an action to recover a penalty for obstructing a highway, it was held that it was not necessary to produce record evidence of the road; and if such evidence is introduced, as for instance the order establishing the road, it is not necessary prior to the introduction of such order, to show that all the previous steps required by the statute had been taken; but that the presumption is, that the antecedent proceedings have been regular, which presumption, however, is subject to be rebutted.—*Neally v. Brown*, 1 Gibson, 10; see also *Sage v. Barnes*, 9 Johns., 335.

Form of Commissioner's determination not to alter or discontinue road.

We, the said commissioners of highways to whom the within petition is addressed having duly and properly examined into the matter of said petition, do determine not to alter (or discontinue) the road therein described.

Witness our hands this — day of —, A. D. 18—.

JAMES ROBBINS, } Commissioners
JOHN A. ROTNOUR, } of
HARVEY J. STEWART, } Highways.

¹*Form of Agreement as to damages in laying out Road.*

Whereas, a road was laid out on the — day of —, A. D. 18—, by J. K. Ballard, G. B. Stanchfield, and Ebenezer Tucker, commissioners of high-

In case the commissioners and owners of land claiming damages can not agree it shall be the duty of the commissioners to assess the damages, at what they may deem just and right, to each individual claimant with which they can not agree, and deposit a statement of the amount of damages so assessed to each individual with the town clerk, who shall note the time of filing the same. It shall be the duty of commissioners, in all cases of assessing damages, to estimate the advantages and benefits the new road or alteration of any old one will confer on complainants for the same as well as the disadvantages.¹

Assessment of
damages.

Advantages and
benefits.

ways of the town of *Nora*, in the county of *Jo Daviess*, on the application of the requisite number of legal voters residing within three miles of said road as follows: commencing, &c., (*insert description of the road as in the order*) which road passes through the land of *Peter F. Parks*, being known and described as follows: (*here describe the land with reasonable certainty.*) Now, therefore, it is hereby agreed between the said commissioners and the said *Peter F. Parks*, that the damages sustained by the said *Peter F. Parks*, by reason of the laying out and opening said road upon his land, hereinbefore described, be liquidated and agreed upon at ——— dollars.

In witness whereof, the said commissioners and the said *Peter F. Parks* have hereunto subscribed their names the — day of —, A. D. 18—.

L. K. BALLARD, } Commissioners
G. B. STANCHFIELD, } of
EBENEZER TUCKER, } Highways.
PETER F. PARKS.

Form of Release of Damages by owner of Land.

Whereas, a road having been laid out on the — day of —, 18—, by *Andrew Cook*, *Curtis St. John*, and *J. R. Wells*, commissioners of highways of the town of *Wauconda*, in the county of *Lake*, on the application of the requisite number of legal voters residing within three miles of said road, as follows: (*insert description of the route, as set forth in the order laying it out*) which road passes through certain lands owned by me, being known as follows: (*here insert description of the lands.*) Now, therefore, know all men by these presents, that I, *Augustus Granger*, for value received, do hereby release all claims to damages sustained by me by reason of laying out and opening said road through my said lands above described.

In witness whereof, I have hereunto set my hand and seal this — day of —, A. D. 18—.

AUGUSTUS GRANGER, [SEAL.]

Executed and delivered }
in presence of }
BRYON HAYNES SHEPARD.

¹*Form of Commissioners' Assessment of Damages in case of no agreement or release.*

We, the undersigned commissioners of highways of the town of *Bloomington*, in the county of *Du Page*, having on the — day of —, A. D. 18—, upon due application made to us for that purpose, laid out a road as follows: commencing, &c., (*insert description of the road according to survey,*) and certain owners of lands over which said road passes, to wit: (*state the names of the owners of the lands who claim damages, with whom the agreement has not been made*) not having released all claims to damages sustained by reason of the laying out and opening the same, and not being able to agree with them as to the amount of such damages, having applied to them and each of them for that purpose, and endeavored to make such agreement, we proceeded to assess the same at what we deem just and right to each individual claimant with whom we could not agree, taking into account and estimating the

Orders to be filed
by clerk.

Time to appeal.

§ 57. It shall be the duty of the town clerk, whenever any order of the commissioners for laying out, altering or discontinuing a road shall be received by him, to carefully file the same; and the time hereinafter limited for appealing from such order shall be

advantages and benefits the road will confer on the claimants for the same, as well as all disadvantages, and have assessed the damages of each owner as follows: To *Hiram Cody*, on (set forth a description of the land with reasonable certainty) at fifty dollars; being inclosed (or cultivated or improved) lands. To *John Farmer*, on (describe the land) at twenty dollars; and to *H. B. Hills* on the south-west quarter of section eight, we have estimated the advantages of said road equal to any and all his damages.

In witness whereof, we have hereunto set our hands this — day of —, A. D. 18—.

MOSES K. HOIT, } Commissioners
J. BARNES, } of
L. E. LANDON, } Highways.

The last clause in the foregoing form is added in view of Constitution, Art. XIII, § 11, which provides that no man's property shall be taken or applied to public use without just compensation being made to him. The advantages of the road, it seems, must be taken into account, and will properly be considered compensation to the owner, so far as it goes in enhancing the value of his lands. Consistency would therefore seem to require, that in every instance where damages are claimed, that the advantages be balanced off against the disadvantages, or damages, and report thereof made, as in the foregoing form.

In the case of *Hatch v. Vermont Central R. R. Co.*, Vermont Supreme Court, June 1853, the court say: "The general rule may now be regarded as settled in this country, that the advantages accruing to the proprietor of the land taken by the contemplated public work, may be taken into account in appraising the damage. So, too, where any portion of the land is taken, the commissioners may doubtless estimate consequential damages to the remaining portion of the land. It is scarcely possible to come fairly at the value of the land taken or actual damage suffered, in any other mode."—Cites *Symonds v. City of Cincinnati*, 14 O. R., 147.

The owner of the soil over which a highway is laid, retains all his rights not incompatible with the public right of way, and may maintain trespass for cutting timber therein.—*Babcock v. Lamb*, 1 Cow., 233.

The grant or laying out of a highway gives only a right of way to the public: the fee, or right of soil, remains in the original owner, and an action of trespass will lie for any exclusive appropriation of the soil.—3 *Hill*, 567; 12 *Wend.*, 98; 14 *Johns.*, 483; 2 *Johns.*, 357; 15 *Johns.*, 447; *Huntly v. Middleton*, 13 *Ills.*, 54. As a public highway is a mere easement and the seizin and right to convey still continue in the owner of the land over which it is laid out, it is no breach of the covenant of seizin and power to convey contained in the deed, that part of the land conveyed was a highway and used as such.—*Whitbeck v. Cook*, 15 *Johns.*, 483.

In case of a town plot acknowledged and recorded under the laws of Illinois, the title to the ground embraced in the streets and alleys, vests in the corporation and the original owner has no further control over that portion of the land.—*Huntly v. Middleton*, 13 *Ills.*, 54.

It seems that the title to the land over which a turnpike road passes is vested in the company solely for the purpose of a road, and that when the road is abandoned, the land reverts to the original owner.—12 *Wend.*, 371.

The right of way, public or private, is but an incorporeal hereditament, an easement which *per se* does not divest the owner of the fee of the land. The soil is nevertheless the owner's, and he is entitled to the same remedies for an injury to his residuary interest, that he would be entitled to if it was entire and absolute.—*Gidney v. Earl*, 12 *Wend.*, 98.

It has been decided in New York, their constitution being the same as ours, in this respect, that an act of the legislature giving to commissioners of highways the power to lay out new roads through wild or unimproved lands, without the consent of the owner, is unconstitutional and void, if no compensation is required to be made to such owner.—*Wallace v. Karlenowski*, 19 *Earb.*, 113; *Gould v. Glass*, *Id.*, 179. It is held also, that such consent, for the purpose of waiving damages, need not be in writing, but may be verbal, and proved by oral testimony.—*Fowler v. Mott*, *Id.*

Lands adjoining a public highway, remaining uninclosed, are considered as dedicated to the public use, and no action will lie by the owner against any person traveling over them.—*Cleveland v. Cleveland*, 12 *Wend.*, 172.

It is held in New Hampshire, that the doings of selectmen in laying out highways can not be supported, unless it appear that due recompense was allowed to the owners of lands through which such highway was laid out, and that the owners had an opportunity to be heard upon the subject of damages.—*Pritchard v. Atkins*, 3 *N. H. Rep.*, 335. But when a road was opened by order of the proper authority, according to law in every respect, except that no damages were assessed by the jury to the owners of the land, held in North Carolina, that none but those owners could impeach the order for that cause.—*Woodard v. McCullough*, 1 *Bredell R.*

Where a highway is laid out along the line of a farm, taking no portion of the land of the owner, but subjecting him to the expense of maintaining the whole of a fence, the expense of the half of which only was formerly borne by him, such owner, under the existing highway act, is not entitled to compensation; and although damages are allowed to him the supervisors of the county have no authority to cause the same to be collected.—*People v. Sups. Oneida Co.*, 19 *Wend.*, 120.

computed from the time of filing the same; but the town clerk shall not record such order until a final decision is made, and not then unless such order is confirmed.

§ 58. Whenever it shall be represented to the board of supervisors of any county, at any regular or special meeting, by a petition of at least thirty-five legal voters of the county, residing within three miles of any state road, that said road, or any portion thereof, within said county, is useless and burthensome and that the public interest requires that the same, or any particular portion thereof, setting forth that portion, should be vacated, or that the public interest requires the relocation of said road, or any part thereof, setting forth what part, said board shall proceed and appoint three suitable persons of said county as viewers, to view said road, who shall, within a reasonable time, and after being duly sworn to perform their duties faithfully and impartially, proceed to examine said road, and particularly that portion thereof in question, and make report, in writing, of their doings, at the same or next meeting of the board of supervisors.¹

State roads.

1861.

Petition for vacation or relocation to board of supervisors.

Appoint viewers.

As held in Massachusetts, where damages upon laying out a road have been assessed or awarded to an individual, the town would be liable for the amount thereof, although the road had been discontinued before payment, and in fact never entered upon. It was held that the owner had a vested right to such damages, and was entitled to a writ of *mandamus* to compel payment.—*Harrington v. Berkshire*, 22 Pick., 263.

Where damages, sustained by the owners of land taken for the improvement of a public highway under and by virtue of an act of the legislature, have been assessed by a jury, and the verdicts of the jury have been laid before the board of supervisors who have liquidated and settled the amount of damages due to the land owners respectively pursuant to the statute, such land owners have a vested right to the sums awarded to them respectively, for such damages; and are entitled to a writ of *mandamus* to compel the board of supervisors to cause the same to be raised and paid to them. Such right will not be divested by a subsequent repeal of the statute under which the damages were assessed.

A legislative act, whether it be a positive enactment or a repealing statute which takes away the vested rights of property of an individual for any purpose except where property is taken for public use, and upon a just compensation is invalid as being above the power and beyond the scope of legislative authority.

The public use of a highway being but an easement, subject to which the owner of the land over which it passes retains his title, there is always a contingency by which the owner may return into full possession of the land, on its being no longer required by the public. When this contingent event will happen is ordinarily unknown and is wholly immaterial, as regards the rights of the land holder, whether the public retains the use of the land for a century or for a year, or but for a single day, can not affect his title to a compensation. That becomes fixed and vested, the instant his property is taken for public use.—*The People ex rel Fountain and others v. The Board of Supervisors of the county of Westchester*, 4 Barb.

¹ Form of Petition to Board of Supervisors for vacation, or relocation of State road.

To the Board of Supervisors of the county of Winnebago, State of Illinois:

The petition of the undersigned, legal voters of said county of Winnebago, residing within three miles of the state road leading from —, to —, (describe the road as it is usually known) would respectfully represent, that the following portion of said road, lying in said county, to wit: (describe the portion of the road in question,) is useless and burthensome, and that the public interest requires that such portion of said road should be vacated: Your petitioners would therefore pray that viewers may be appointed to view and report in the premises, to the end that such portion of said road above described may be vacated.

And your petitioners will ever pray.

Dated this — day of —, 18—.

(Names of petitioners.)

When the petition is for relocation, after the word "represent," state as follows:

"That the public interest requires that the following portion of said road,

Report for vacation.
1861.

§ 59. When the petition is for the vacation of the road, the viewers shall proceed to ascertain the fact, as to whether the road is useless and burthensome, and if they find such to be the fact, they shall so report. If the petition is for the relocation of the

to wit: (*describe the portion desired to be relocated,*) should be relocated as follows, (*set forth how the relocation is desired.*) Your petitioners would therefore pray, that viewers may be appointed to view and report in the premises, to the end that such portion of said road may be relocated as the public interest shall require."

When viewers are appointed upon the prayer of a petition, the clerk of the board should issue to them a written notice of their appointment, and transmit to them with the original petition, which notice may be in the following form:

Form of Notice to viewers appointed to view and report upon vacation or relocation of state road.

To *John Smith, Peter Hallowell, and Milton Kilburn*, of *Winnebago county*:

You, and each of you, are hereby notified that at the present session of the Board of Supervisors of said county, you were duly appointed viewers according to the prayer of the annexed petition.

Dated at *Rockford*, this — day of —, 18—.

E. C. GAYLORD, Clerk.

The oath of the viewers required to be taken before proceeding, should be reduced to writing, or a certificate thereof made by the officers administering the same, and endorsed on, or annexed to the petition; the oath may be in the following form:

Form of Oath of Viewers appointed to view and report upon vacation or relocation of State road.

STATE OF ILLINOIS, }
Winnebago county, } ss.

We, *John Smith, Peter Hallowell, and Milton Kilburn*, appointed as viewers in accordance with the prayer of the within (*or annexed*) petition being severally duly sworn, do each solemnly swear, that we will severally perform our duties as such viewers, faithfully and impartially.

Subscribed and sworn to }
before me this — day }
of —, A. D. 18—, }

JOHN SMITH,
PETER HALLOWELL,
MILTON KILBURN.

ALFRED E. HALE, Justice of the Peace.

Form of Report of Viewers upon relocation or vacation of State Road.

To the board of supervisors of *Winnebago county*:

We, the viewers appointed by your board at the last (*or present*) session thereof, to view and examine the state road set forth and described in the annexed (*or accompanying*) petition, having been first duly sworn, and having thereupon proceeded to ascertain the facts in the case, and having examined said road, and particularly that portion thereof in question, beg leave to report, that they do find that portion of said road particularly described in said petition, to wit: (*describe the portion of the road in question as described in the petition*) to be useless and burthensome, and do recommend that the same be vacated according to the prayer of said petition; all of which is respectfully submitted.

Dated this — day of —, A. D. 18—.

JOHN SMITH,
PETER HALLOWELL, } Viewers.
MILTON KILBURN, }

When the report is upon a petition for relocation, pursue the foregoing form to the word "Report" inclusive, and then add the following:

road they shall proceed to inquire whether the public interest requires such relocation, and shall report to the board accordingly, as they shall find the facts to be. If they shall find that the public interest requires such relocation they shall relocate the line of said road, as in their opinion is required, and cause a survey thereof to be made by a competent surveyor, and shall accompany their report with an accurate plat and survey of such relocation. On receiving the report of said viewers the board of supervisors may, in their discretion, order the vacation or relocation of said road, agreeably to the report of the viewers.

Report for relocation.

Survey and plat of relocation.

Order for vacation or relocation.

§ 60. No petition for the vacation or relocation of any State road shall be entertained or the prayer thereof granted by the board of supervisors, unless public notice of the presentation of such petition shall be given, at least twenty days prior to the presentation, by posting up notices in at least three public places on the route of the road and on the door of the court house and also on the door of the county clerk's office should it be kept in a separate building.¹

Notice of petition for vacation or relocation.
1861.

Where posted.

§ 61. The viewers, and persons they may necessarily employ to aid them, under the provisions aforesaid, shall be allowed such reasonable compensation as the board of supervisors may deem just, to be paid out of the county treasury; and the board shall have power, in their discretion, to require the applicants for the vacation or relocation of any State road to deposit with the clerk a sufficient sum of money to pay the expenses of viewing the same, in case the report of the viewers shall be adverse to the prayer of the petition, and to be returned, in case their report shall be favorable.

Compensation of road viewers and others.

1861.

Deposit of expenses.

§ 62. All public highways, laid out by order of the commissioners of highways or supervisors, on appeal, shall not be less than four rods wide.

Width of public roads.

§ 63. The public roads, now existing by law, are declared the public highways of the town in which such roads shall lay, and this act shall not be construed as conferring any power on the commissioners of highways to alter state roads now or hereafter existing by law.

Existing roads declared highways.

State roads, commissioners not to alter.

§ 64. All roads laid out by authority of the county commissioners or county court in counties adopting township organization

Roads by county authority legalized.

1861.

That they do find that the public interest requires that such portion of said road particularly described in said petition, to wit: (*describe the portion of the road in question as described in the petition*) should be relocated; that they relocated the line thereof agreeably to the prayer of said petition, and caused a survey thereof to be made by a competent surveyor, and herewith accompanying this report is an accurate plot and survey of such relocation; we do therefore recommend that said road as relocated be established accordingly of record."

When the report is adverse to vacation or relocation, the foregoing forms can be varied according to the fact.

¹Form of Notice of presentation of petition for vacation or relocation of State Road.

Public notice is hereby given that a petition will be presented to the board

Order to be evidence.

Resurveys on application.
1861.

Consult original field notes and survey.
1861.

Re-established road.

prior to the time of adopting township organization, and which have been opened and traveled as highways for the space of five years from the date of laying out or remained open through uninclosed land for that length of time, are hereby declared to be public highways, and the order of said county commissioners or county court, entered of record, establishing such roads, shall be evidence of the regularity of all the proceedings in laying out such roads anterior to such order.

§ 65. It shall be the duty of the commissioners of highways, on application of twelve freeholders, residing within three miles of any such road, to proceed and cause the same to be resurveyed and more perfectly described, having posted notices of their intention to do so, in three public places in the neighborhood of the road, for at least ten days prior thereto.¹

§ 66. In resurveying any such road the commissioners of highways shall consult the original field notes or survey thereof, if the same can be produced, and shall hear any and all other evidence, written or parol, which may be offered in relation to the original location of such road, in cases where there shall be any doubts as to the location and the time and manner of traveling such road; and having heard such evidence, they shall proceed and re-establish the line of said road, in accordance with the evidence before

of supervisors of *Winnebago* county, at the next meeting thereof, praying for the vacation of the following portion of the State road leading from — to —, to wit, (*describe the road as described in the petition.*)

Dated this — day of —, A. D. 18—.

When the notice is for relocation of a road, the form of notice can be varied according to the petition.

¹*Form of application by twelve freeholders for resurvey of road established by County Court.*

To the Commissioners of highways of the town of *Vernon*, in the county of *Lake*:

The undersigned, twelve freeholders residing within three miles of the following road, laid out by authority of the county court of said county, in the year 18—, to wit, (*describe the road by the description by which it is generally known*) do hereby make application to you requesting that you cause said road to be resurveyed and more perfectly described, according to the law in such cases; said road having been opened and traveled as a highway for the space of five years from the date of laying out, (*or, said road having remained open through uninclosed lands for the space of five years from the date of laying out.*)

Dated this — day of —, A. D. 18—.

Form of Notice of application by twelve freeholders to Commissioners of Highways, for resurvey of Highway established by County Court.

Notice is hereby given that application in conformity with the law in such cases, will be made after the expiration of *ten* days from the date of this notice, to the commissioners of highways of the town of *Vernon*, in *Lake* county, requesting that they survey and more perfectly describe a certain road laid out by authority of the county court of said county, in the year 18—, to wit, (*describe the road as in the application*); said road having been opened and traveled as a highway for the space of five years from the date of laying out, (*or as the case may be, according to the application.*)

Dated this — day of —, A. D. 18—.

them, and shall make a correct plat thereof, with a certificate of their doings in the premises, embodying their survey of the road and their determination in the premises, which they shall file in the town clerk's office; and which action of the commissioners of highways shall be final and conclusive, as to the location of such road and the time and manner of traveling the same.¹

§ 67. The laying out and establishing of a highway, by the commissioners of highways, on the route of any road laid and established by county authority, as aforesaid, shall not operate to vacate or discontinue the road before laid out and established, unless the order of the commissioners shall so declare; and such vacation or discontinuance shall likewise have been petitioned for.

APPEALS.

§ 68. Any person or persons, being owners of or agents for any tract of land upon the route or line of or over which any highway way altered, discontinued or laid out shall run, feeling themselves aggrieved by any order made by the commissioners of highways, may appeal from the same, at any time within thirty days after the filing of such order in the town clerk's office. Such appeal shall note the time that such order was filed, and shall be made to three supervisors of the county, neither of whom shall be a resident of the town in which said highway was situated. All persons who desire to make an appeal from such order shall act in concert and make their appeal to the same three supervisors.

§ 69. Every such appeal shall be in writing, and signed by

NOTE.—The commissioners of highways, before proceeding, should be satisfied that notice of the intended application for resurvey of the road in question, has been given as required by law; to which end a copy of the notices posted should be preserved, and an affidavit of the fact of posting accompanying the notice, or endorsed thereon, as in case of the alteration, discontinuance, or laying out a road, may be received as sufficient of the facts stated; the following may be the form of such affidavit:

Form of Affidavit of posting Notices of intended application for resurvey of road established by County Court.

STATE OF ILLINOIS, } ss.
Lake County, }

Elisha Gridley being duly sworn doth depose and say: That he did on the — day of —, 18—, post three notices of which the within, (or annexed) is a true copy, as follows, (here state the several places of posting,) in the town of *Vernon*, in said county, that the places of such posting, were then public places in the neighborhood of the road mentioned in said notices.

Subscribed and sworn to before me, }
this — day of —, A. D. 18—.

ELISHA GRIDLEY.
JOHN LOCKHEAD, Justice of the Peace.

Form of Certificate of Commissioners of highways re-establishing line of road laid out by authority of County Court.

STATE OF ILLINOIS, } ss.
County of Lake, }

We the commissioners of highways of the town of *Vernon*, in said county of *Lake*, do hereby certify, that application having been made to us by twelve freeholders residing within three miles of the road, known as (describe the road as in the application) requesting that said road be resurveyed and more perfectly described, and being satisfied that notice of such application

What the appeal
shall state.
1881.

the party or parties appealing. It shall briefly state the ground upon which it is made and whether it is brought in relation to damages assessed by the commissioners of highways or in relation to the alteration, discontinuance or laying out of the road, or in relation to both, or whether it is brought to reverse entirely the determination of the commissioners or only to reverse a part thereof, and in the latter case it shall specify what part.¹

had been given according to law, we did on the — day of —, A. D. 18—, proceed to re-establish the line of said road, and having consulted the original field notes and survey thereof, and having heard all other evidence offered in relation to the original location of said road, and the time and manner of traveling the same; and finding that said road was laid out by authority of the county court of said county, and opened and traveled as a highway for the space of five years from the date of laying out, (*or as the case may be*), we did resurvey and more perfectly describe the same, and have established the line of said road, in accordance with the evidence before us, and which line is the center thereof: as follows, to wit, commencing (*here embody the survey, giving courses and distances as rendered by the surveyor*), which we do determine to be the correct line of said road.

In witness whereof, the said commissioners of highways have hereunto set their hands, this — day of —, A. D. 18—.

ASAHEL TALCOTT,	} Commissioners of Highways.
GEORGE GRIDLEY,	
JOHN BOLGER,	

When the original field notes or survey can not be produced, the foregoing form of certificate can be varied as follows: in lieu of the words "and having consulted the original field notes and survey thereof," say "in the absence of the original field notes or survey thereof, as the same could not be produced."

¹*Form of Appeal from decision of Commissioners in altering, discontinuing, laying out or refusing to lay out a road.*

To Homar Wilmarth, town clerk of the town of Barrington, in the county of Cook:

The undersigned, *John Jackson*, of the town aforesaid, feeling himself aggrieved by an order made by the commissioners of highways of said town, on the — day of —, A. D. 18—, in altering a highway in said town, (*or, in laying out a highway, or, "in discontinuing," or, "refusing to lay out a highway," as the case may be*) does hereby appeal to, and submit the matter in controversy to the decision of three supervisors of the county of Cook aforesaid, to be selected by you, agreeably to the statute in such cases; which order of said commissioners was filed in the town clerk's office of said town on the — day of —, A. D. 18—, a copy of which is hereunto annexed, in and by which the road in question, and the proceedings and determination of said commissioners will more fully appear. The grounds upon which this appeal is made, are (*here briefly state the grounds*), and said appeal is brought in relation to the laying out of said highway, (*or, altering of said highway*), and to reverse entirely the determination of said commissioners, (*or as the case may be*.) The undersigned therefore asks that you, as town clerk of said town, will proceed according to law, and select three supervisors to hear and determine said appeal.

Dated this — day of —, A. D. 18—.

JOHN JACKSON.

NOTE.—It will be well to annex a copy of all papers in the case accruing anterior to the order of the commissioners of highways, as well as a copy of the order, and have the town clerk certify the whole to be correct copies of the original on file in his office.

It has been held in New York, *Bushwick v. Masserole*, 10 Wend., 122, that an appeal, stating the proceedings of commissioners in laying out a road to be illegal, is a sufficient compliance with the law, requiring the grounds of the appeal to be briefly stated, in the case where exceptions were taken to the sufficiency of the petition, on the ground of the qualification of the petitioners within the meaning of the law, yet, it was thought it would have been well to have specified the objection.

§ 70. The appeal shall be addressed to the town clerk of the town wherein the road in question shall be, and filed with him within the time required for taking appeals; and in case there shall be no town clerk in the town then such appeal may be addressed to and filed with the supervisor or any justice of the peace of said town; and upon the filing of a bond by the party taking such appeal, executed to the supervisor of the town, in sufficient amount and with sufficient sureties, to be approved by said town clerk, supervisor or justices of the peace, conditioned to pay all costs arising from such appeal, in case the determination of the commissioners of highways in the premises shall not be reversed, said town clerk, supervisor or justice of the peace, as the case may be, shall at once proceed to select, at his discretion, three supervisors of the county, neither of whom shall be a resident of the town in which the highway is situated, for the hearing of said appeal, which supervisors shall proceed to hear and determine said appeal, as hereinafter provided.¹

Appeal, to whom addressed.

When filed.
1857.

In case of no town clerk.

Bond.

Condition.
1861.

Selection of supervisors.
1857.

§ 71. In case the condition of the bond provided in the preceding section shall not be complied with in thirty days after the appeal shall be determined, the supervisor shall bring suit thereon, before some justice of the peace of the county, who shall have jurisdiction in such cases without regard to the amount of the bond, and, when collected, the amount shall be paid to the several persons interested.

Suit on appeal bond.
1861.

An appeal suspends the powers of the commissioners: and until their acts are affirmed by a decision they can not open the road. If they do so, they are trespassers.—*Clark v. Phelps*, 4 Cow., 190.

If on an order being made discontinuing a highway, a fence be built across it, an appeal subsequently brought will not have the effect of rendering the fence a public nuisance.—*Drake v. Rogers*, 3 Hill, 604.

After the appeal the supervisors will become actors, and if they do not proceed, it can not be imputed as a lach to the party.—*Clark v. Phelps*, 4 Cow., 160.

¹*Form of Bond to Supervisors, in case of Road Appeal.*

Know all men by these presents, that we, *Hugh O. Burt* and *J. O. Andrews*, of the county of *Peoria*, and state of *Illinois*, are held and firmly bound unto *Joseph Slocum*, supervisor of the town of *Brimfield*, in said county, and to his successors in office, in the penal sum of (*here insert the sum sufficient to pay all costs arising from the appeal, as near as can be estimated*) which sum well and truly to be paid we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents: Sealed with our seals, and dated this — day of —, A. D. 18—.

The condition of the above obligation is such, that, whereas, the above bounden *Hugh O. Burt* has appealed from the decision of the commissioners of highways of said town of *Brimfield*, in laying out (*or as the case may be*), a highway, from (*describe the road briefly*) by their order bearing date the — day of —, A. D. 18—, and filed in the town clerk's office, the — day of — A. D. 18—. Now, therefore, if the above bounden *Hugh O. Burt*, shall promptly pay, or cause to be paid all costs arising from such appeal, in case the determination of the commissioners of highways in the premises shall not be reversed, then the above obligation to be void, otherwise to remain in full force and effect.

HUGH O. BURT, [SEAL.]
J. O. ANDREWS, [SEAL.]

Approved by me, this — day of —, A. D. 18—.

JOSEPH BLANCHARD, Town Clerk.

Rule for selecting supervisors.
Certificate of selection.

§ 72. The town clerk, supervisor or justice of the peace, as the case may be, in making the selection of the supervisors as aforesaid, shall have due regard to the interests of the persons interested, and shall, upon making such selection or nomination, give a certificate of the same, which shall be delivered to the person taking such appeal; which certificate said person shall cause to be delivered to one of the supervisors therein named, within ten days from the time of filing such appeal with the town clerk or other officer, as aforesaid, and shall also, within the same time, cause a notice of such appeal to be given to the other two supervisors named in said certificate.¹

Notice of appeal.

Meeting of supervisors to consider appeal to be agreed on.

§ 73. It shall be the duty of the supervisors to whom the appeal is made, as soon as may be convenient, after the expiration of thirty days from the filing of the order in the town clerk's office from which the appeal is made, to agree upon a time when and where they will meet to consider the same; which shall be at some place deemed convenient, at or near the road to be examined.

Appellant to give notice of time and place.

§ 74. The person or persons making the appeal shall cause a

¹*Form of Certificate of Town Clerk on selection of three Supervisors for hearing Appeal.*

County of Cook, }
Town of Barrington, } ss.

I, *Homer Wilmarth*, town clerk of said town of *Barrington*, do hereby certify that on the — day of —, A. D. 18—, came *John Jackson*, and filed with me his appeal in writing, appealing from the commissioners of highways of said town of *Barrington* in altering a highway (or in laying out a highway, or as the case may be,) as follows: (*here describe the road as set forth in the order*; which order of said commissioners in altering said road (or as the case may be) was deposited with me, and filed on the — day of —, 18—. The grounds upon which said appeal is made, are (*here state the grounds as contained in the appeal*) and that I have selected *George M. Huntoon*, supervisor of the town of *Evanston*, *Benjamin Cool*, supervisor of the town of *Bremen*, and *J. Matteson*, supervisor of the town of *Wheeling*, to hear and determine said appeal, having had, in making such selection, due regard to the interests of the persons interested.

Given under my hand this — day of —, A. D., 18—.

HOMER WILMARTH, Town Clerk.

Form of Notice to be given to Supervisors by persons taking Appeal.

To *George M. Hunton*, Esq., supervisor of the town of *Evanston*, county of *Cook*.

SIR:—The undersigned has taken an appeal from the decision of the commissioners of highways of the town of *Barrington*, in the county aforesaid, in altering a highway, or in laying out a highway (or as the case may be,) as follows:—(*here describe the road as set forth in the order*:) which order of said commissioners, in altering said road (or as the case may be) was deposited with the town clerk and filed on the — day of —, 18—, and said appeal was filed with said town clerk on the — day of —, 18—, whereupon supervisors *George M. Huntoon*, of *Evanston*, *Benjamin Cool*, of *Bremen*, and *J. Matteson*, of *Wheeling*, were selected by said clerk to hear and determine said appeal. The grounds upon which said appeal is made, are (*state the ground as contained in the appeal*.)

Dated this — day of —, 18—.

JOHN JACKSON.

notice, in writing, of the time and place agreed on by the three supervisors when and where they will meet, to be served on each of the commissioners of highways from whose order they appealed, and also on at least three of the petitioners who petitioned in relation to such road; which notices shall be served at least eight days before the time mentioned therein, by delivering one to each commissioner or leaving one at each of their dwelling houses; and in like manner shall the notices be served on each of the three petitioners.¹

¹*Form of Notice of Appeal to be given to Commissioners of Highways and Petitioners.*

To John B. Judd, James D. Twogood and Truman Judd, commissioners of highways of the town of *Lysander*, in the county of *Winnebago*:

SIRS:—Please take notice that I have appealed from the decision of the commissioners of highways of the said town of —, made on the — days of —, laying out a highway, as follows, to wit: (*here insert a description of the road:*) and that A. B., supervisor of the town of —, C. D., supervisor of the town of —, and E. F., supervisor of the town of —, of said county, to whom said appeal is made; will meet at the house of —, on the — day of —, at — o'clock, — M., for the purpose of hearing and determining said appeal; which appeal is taken for the purpose of wholly reversing the decision of said commissioners in laying out the said road (*or as the case may be*) at which time and place you may appear and show cause, if any you have, why said decision should not be wholly reversed.

Yours, &c., EDWIN M. LUTHER.

Dated this — day of —, A. D. 18—.

This notice should be served by delivering a copy to each of the commissioners, or by leaving it at their dwellings. In the notice of the three petitioners, the address can be thus:

“To (*name the petitioners*) three of the petitioners who petitioned for the road herein described.”

The notice should be served upon the three petitioners in like manner as upon the commissioners of highways, so that each may have a copy. A true copy should be retained by the person or persons, taking the appeal; and the person serving such notice should make affidavit of the fact, to be indorsed upon the back of the copy of the notice retained, which affidavit may be in the following form. The supervisors to whom an appeal is taken, can not act unless the commissioners and three of the petitioners are notified, and should they do so, their action is invalid. The appeal, however, will not be dismissed on failure to give the notice; it will stand until acted on by the supervisors.—*McPherson et al. v. Holdridge*, 24 Ills., 83.

Form of Affidavit of Service of Notice of Appeal upon Commissioners of Highways.

STATE OF ILLINOIS, }
Winnebago County, } ss.

Edwin M. Luther, being duly sworn, doth depose and say: That he did, on the — day of —, A. D. 18—, make service of a note in writing, of which the within is a true copy, upon A., B., and C., commissioners of highways of the town of *Lysander*, in said county, by delivering one to each of said commissioners, (*or by leaving at their dwelling houses as the case may be.*)

EDWIN M. LUTHER.

Subscribed and sworn to before me, }
this — day of —, A. D. 18—. }

A. S. VANDYKE, Justice of the Peace.

Form of Affidavit of Service of Notice of Appeal upon three of the Petitioners.

STATE OF ILLINOIS, }
Winnebago County, } ss.

Edson P. Albee, being duly sworn, doth depose and say, that he did, on

Supervisors to
meet and hear
proofs.

Witnesses may
adjourn their
decision.

Manner of pro-
ceeding to decide
appeal.

§ 75. It shall be the duty of supervisors to convene at the time and place mentioned in the notice, and to hear the proofs and allegations of the parties. They shall have power to issue process, to compel the attendance of witnesses, and may adjourn from time to time, as may be necessary. Their decision, or that of any two of them, shall embrace the whole matter in controversy. They shall, first, consider the propriety and expediency of locating, altering or discontinuing the road; secondly, the subject of damages, if such subject was embraced in the appeal under which they are acting; and they shall fix upon the amount of damages which, in their judgment, is right and just, to be paid to each person claiming damages; but no person shall be entitled to reassessment of damages, unless his or her name appears in the appeal in reference to that subject. The supervisors shall be governed by the same rules, in assessing damages, as is provided in section fifty-six of this article, for the government of commissioners of highways in such case.¹

the — day of —, A. D. 18—, make service of a notice in writing of which the within is a true copy, upon *Ezekiel Brown, Wm. Courtright and Geo. S. Parker*, being three of the petitioners who petitioned for said road, by delivering one to each of said persons, (or by leaving at their dwelling houses, as the case may be.)

EDSON P. ALBEE.

Subscribed and sworn to before me,

this — day of —, A. D. 18—, }

A. S. VANDYKE, Justice of the Peace.

The attendance of a majority of the commissioners of highways, it seems, would be a waiver of notice as to the commissioners, but the attendance of one only will not have that effect.—20 *Wend.*, 186.

Where commissioners of highways have acted upon a petition and treated it as valid, they can not afterwards in any proceeding in which they may be concerned, deny its sufficiency.—*See Carmel v. Judges of Putnam*, 7 *Wend.*, 264.

When the supervisors, dismiss an appeal and adjourn without any intention of further action, they can not resume the subject, unless notice of the time and place of a future meeting is served on the commissioners of highways and on the three petitioners before served, and without these, the action of the supervisors is void.—*Keach v. The People*, 22 *Ills.*, 478.

¹*Form of Order of Supervisors on Appeal from Commissioners in altering, discontinuing, laying out, or refusing to lay out a Highway.*

STATE OF ILLINOIS, } ss.
County, }

Whereas, on the — day of —, 18—, G. H. filed with the town clerk of the town of —, in said county of —, an appeal addressed to said town clerk, appealing from the order and determination of the commissioners of highways of said town of —, in altering, ("in discontinuing," "in laying out," or "refusing to lay out,") a highway as contained in the order of said commissioners deposited with said town clerk and filed the — day of —, 18—, a copy of which said order, as well as all the papers before us in said appeal are hereunto annexed, and said town clerk having selected us, the undersigned three of the supervisors of said county, for the hearing of said appeal, and we having met on the — day of —, 18—, at — o'clock, — M., at (stating place) to hear the proofs and allegation of the parties, being the time and place agreed upon by us when and where we would meet to consider such appeal, and it appearing that said commissioners of highways, and three of the petitioners in said case, had been duly notified of such meeting, as required by law, we did proceed to hear the proofs and allegations of the parties, and to consider said appeal; and we, being now fully advised in the premises, do adjudge, order and determine

§ 76. Upon the refusal of the commissioners of highways to alter or discontinue a road or lay out any new road, petitioned for as provided in section fifty-one of this article, any one of the petitioners may appeal from such determination in the same manner ^{Appeal in case of refusal to alter, discontinue or lay out road. 1861.}

that the order and determination of said commissioners of highways, be and the same is in all things affirmed, (*or as the case may be.*)

In witness whereof, we have hereunto set our hands, this — day of —, A. D. 18—.

A. B., Supervisor of the town of ———.
C. D., “ “ “ ———.
E. F., “ “ “ ———.

Fees of Supervisors, one day each, \$4.50.

NOTE.—Where the appeal is from the order of the commissioners of highways, in altering, discontinuing or laying out a road, and the supervisors decide that such alteration, discontinuance, or laying out is necessary and proper, and that the public interest will be promoted thereby, they will simply state in their order that the order and determination of the commissioners of highways is in all things affirmed.

Where the appeal is from the determination or order of the commissioners in refusing to lay out, alter, or discontinue a road, and they shall decide that such road ought to be laid out, altered, or discontinued, the foregoing form of order should be changed as follows:

“And we being now fully advised in the premises, are of opinion that the laying out (*or alteration, or discontinuance*) of said highway is necessary and proper, and that the public interest will be promoted thereby—we do therefore order, that the order and determination of said commissioners of highways be and the same is hereby in all things reversed; and that said highway be laid out (*or altered*) according to the following survey thereof which we have caused to be made by a competent surveyor, to wit, (*here incorporate the survey or the surveyor*) and do order and determine that the same be established (*or altered*) according to said survey and the plat hereunto annexed and made part of this order, which is hereby declared to be a public highway, four rods wide, the line of said survey being the center thereof” (*in case of discontinuance, say; “and do order and determine that said highway be and the same is discontinued according to the petition therefor.”*)

NOTE.—Where one of the supervisors becomes unable to attend, before the determination of the appeal whereby another is associated in his stead, some statement of the fact should appear in the order of proceedings of the supervisors, otherwise there would be a variance in the record, and the person associated would seem to be a stranger in the transaction. In such cases, the order may be varied as follows:

“And said town clerk having selected A. B., C. D., and I. J., three supervisors of said county, for the hearing of said appeal, and said I. J. being unable to attend, before the determination thereof and the undersigned E. F., a supervisor of said county being duly associated in place of said I. J., and we the undersigned supervisors having met on the — day of, &c., (*conclude according to the form of order.*)

NOTE.—The form for assessment of damages by commissioners of highways in laying out a road, can be varied to suit the occasion of assessment of damages by supervisors on appeal.

The order of the supervisors altering or establishing a road should always be drawn with a great degree of care, and should properly show, by recital or by documents and papers annexed and referred to, a history of the whole proceedings, so as to make a perfect record; the foregoing form is recommended as being the most convenient method of the two. It has been held in New York, *Harrington v. People*, 6 Barb., 607, that to give commissioners of highways jurisdiction of proceedings to lay out a highway, an application must be made to them in writing, duly signed as required by law; and that an order directing the laying out of a highway, made on appeal from the decision of such commissioners, must show the making of such application to the commissioners, otherwise the order will not be conclusive evidence of the regularity of the proceedings for laying out the road.

On an appeal from the doings of the commissioners in laying out a road, an inquiry into the damages of the owners of lands, it seems, will be proper to enable the supervisor to determine whether the benefit will equal the expense, and whether the public good will be promoted by the road.—*Bushwick v. Messerole*, 10 Wend., 122.

and subject to the same provisions and restrictions as relates to persons who feel themselves aggrieved by a determination of the commissioners to alter or discontinue a road or lay out a new road.¹

When decision of commissioners is reversed supervisors to proceed.

§ 77. Where an appeal shall have been made from the determination of the commissioners refusing to lay out, alter or discontinue a road and the supervisors shall reverse such determination such supervisors shall alter, discontinue or lay out the road applied for, as the case may be, and in doing so shall proceed in the same manner in which commissioners of highways are directed to proceed in the like cases. Such road shall be opened by the commissioners of the town, in the same manner as if laid out by themselves.

Appeals in case of road on town line.
1861.

§ 78. Appeals may be had from the determination of commissioners of highways of two adjoining towns, in altering, discontinuing, laying out or refusing to lay out any road upon the line between said towns, which shall be granted and conducted in all respects as in other cases, except that the appeal shall be addressed to the town clerks of both towns or other officers of each town, as necessity may require. Each clerk shall select one supervisor, and the party appealing may select the other. Said clerks shall jointly certify the facts of such selection. The supervisors so selected shall proceed, as near as may be, as provided in other cases. The bond for costs in such case, may be executed to the supervisor of either town. Duplicate copies of all orders and proceedings, in such cases, shall be filed with the town clerks of each town.

How taken.

Bond for costs.

When supervisor is unable to attend, another associated.

§ 79. In case any one of the supervisors to whom such appli-

It seems that supervisors on hearing appeals from commissioners of highways, decide the appeal, not on the facts existing at the time of the original application to the commissioners, but on the facts existing at the time of the hearing before them. In this respect, the hearing before them is in the nature of a new proceeding. See *People v. Goodwin*, 1 *Selden*, 573. It is held that it is no part of the duty of supervisors, in considering appeals, to entertain dilatory or technical objections. They are bound to hear and determine the case on the merits. The only questions for them to decide are, as to the expediency or inexpediency of the road, and the amount of damages which will be sustained by the location thereof.—*Beales v. Smith*, 15 *Ills.*, 323.

The supervisors have, no doubt, authority to decide whether the appeal is properly before them, but it seems they have no authority to entertain an objection to the regularity of the proceedings anterior to the decision of the commissioners; as their decision can only be on the merits, as to the necessity and propriety of laying out the road; and if any irregularity has intervened previous to the decision of the commissioners, it can only be corrected by *certiorari* directed to the commissioners.—*Warwick v. Judges of Onsego Co.*, 13 *Mt.*, 423. All objections of a dilatory nature should be made before the commissioners of highways, and should they err in their proceedings, the remedy by *certiorari*, and not appeal, is the proper course, and which it seems will be awarded in such cases.—See *People v. Wilkinson*, 13 *Ills.*, 660.

It seems that where supervisors have committed errors in their order, reversing the order of the commissioners and determining to lay out a road they have a right, after filing their order, to deposit in the town clerk's office a document correcting the errors; which will be deemed a valid amendment. The reversal of the commissioners' order and the determination to lay out the road, were *quasi* judicial acts, and could not be reversed or altered by the supervisors; but making up the record of their proceedings was ministerial, and should they refuse to make such correction, it seems a *mandamus* will be awarded, requiring them to do so.—*Hallock v. Woolsey* 23 *Wend.*, 328.

Where the commissioners of highways refuse to open a road laid out by the supervisors, on appeal, a *mandamus* lies to compel them to do so; which writ need not in the first instance be directed to the commissioners by their individual names. It is only in case of disobedience to the writ that they are to be proceeded against personally.—*People v. Champion*, 16 *Johns.*, 61.

(1) It has been held in New York, 7 *Wend.*, 254, that a general appeal from the determination of commissioners refusing to lay out a road, is a sufficient compliance with the requirements of the statute.

cation shall have been made shall become unable to attend before the determination of such appeal, it shall be the duty of the remaining supervisors named therein to associate with themselves another of the supervisors of the same county, who shall act with them in all subsequent proceedings, in the same manner as if he had been originally named in such appeal. In case the term of office of any supervisor shall expire before the determination of such appeal he shall continue to act in the premises, the same as if he had been re-elected.

When term of office expires.

§ 80. Every such supervisor shall be entitled to receive one dollar and fifty cents for every day employed in hearing and deciding such appeal or when necessarily engaged in reference to the same; and the town clerk, supervisor or justice of the peace shall be entitled, for giving a certificate of an appeal, fifty cents, to be paid by the party appealing, where the determination of the commissioners of highways shall be affirmed; but, where it is reversed, to be charged against and paid by the town.

Compensation of supervisors and town clerk.

1861.

By whom paid.

§ 81. After the action of the supervisors upon an appeal from the decision of the commissioners of highways, in laying out, vacating or altering any road, no application shall be entertained by commissioners for the relaying, vacation or alteration of the same road within one year from the date of the determination of the supervisors thereupon.

1861.

DAMAGES.

§ 82. The amount of damages, as finally settled by the three supervisors or as agreed on by the commissioners of highways, together with all charges of officers and other persons employed in laying out, altering or discontinuing any road, shall be rendered by the commissioners of highways to the board of town auditors, with the amount of damages and charges due each individual; which account shall be audited by said board, certified to and deposited with the town clerk.¹ The town clerk shall make out the

Damages assessed and charges to be reported and audited.

¹Form of Statement of damages and charges in laying out road, to be rendered by Commissioners.

To the board of town auditors of the town of *Geneseo*, in the county of *Henry*:

The following is a statement of damages as settled by the supervisors on appeal, (or as agreed on by the commissioners of highways,) in laying out, (or as the case may be,) a road in the said town of ———, from, (describe the road briefly), together with all charges of officers, and other persons employed in laying out the same, (or as the case may be.)

Damages allowed and due to A. B. for land taken for said road,	\$100.00
Charges of C. D., E. F. and G. H., supervisors, for services in laying out said road, one day each,	4.50
Charges of I. J., as surveyor, one day,	3.00
(Set forth the charges due each individual.)	

Total amount, . . . \$107.50

Dated this — day of —, A. D. 18—.

E. A. WOOD,	} Commissioners of Highways.
JOHN S. HANNA,	
R. P. AMSDEN,	

Amount to be delivered to supervisor.

Proceedings in case of excessive damages.

aggregate amount of such damages and charges, with his certificate thereto attached, and deliver the same to the supervisor of the town previous to the annual meeting of the board of supervisors.¹

§ 83. After a final decision by any three supervisors to whom any road difficulty has been appealed, if, in the opinion of the supervisor, town clerk, the justices of the peace and the commissioners of highways, or any five of them, the damages are manifestly too high, and that, in providing for the payment thereof, an oppressive tax will have to be levied on the property of said town, they may petition the board of supervisors, at any meeting of said board, held within six months after such decision, for relief, either from the whole or a part of the damages. The board shall hear the reasons for and against granting such relief, and if a majority of them shall be of opinion that the town should be relieved from the whole amount of damages, then and in that case the opening of said road shall be postponed until the damages, or

Form of Auditor's Certificate, to accompany foregoing statement of Commissioners.

Henry County, }
Town of Geneseo, } ss.

We, the board of auditors of said town of Geneseo, do hereby certify that the foregoing (or within or annexed) statement of damages and charges, rendered to us by the commissioners of highways of said town, has been examined by us, and the several amounts allowed and audited as therein rendered.

In witness whereof, we have hereunto set our hands, this — day of —, A. D. 18—.

H. J. HUMPHREY, }
PATTERSON HOLMES, } Board of
J. A. McCONNELL, } Town Auditors.
S. FLEMMING, }

¹*Form of Statement of aggregate amount of road damages and charges, with Certificate of Clerk, to be delivered to Supervisor.*

In the matter of damages as settled by the supervisors, (or as agreed on by the commissioners of highways,) and charges, in laying out (or altering or discontinuing) the following road in the town of Walnut Grove in the county of Knox, (describe the road briefly,) as the account therefor has been audited and certified to by the board of town auditors, and deposited with me, they are in the aggregate, ——— dollars.

Dated this — day of —, A. D. 18—.

JOHN FOWLER, Town Clerk.

Form of Certificate of Clerk to be attached to foregoing statement.

Knox County, }
Town of Walnut Grove, } ss.

I, John Fowler, town clerk of said town of Walnut Grove, do hereby certify that the statement hereto attached, is a correct statement of the aggregate amount of damages and charges accruing, as set forth in said statement, as the same appears by the account audited and certified to by the board of town auditors of said town, and deposited with me.

In witness whereof, I have hereunto set my hand this — day of —, A. D. 18—.

JOHN FOWLER, Town Clerk.

a major part thereof, are in some other way provided for than by levying a tax upon the property of the town.¹ Opening of road postponed.

ROADS EXTENDING INTO ADJOINING TOWNS, AND ON STATE, COUNTY AND TOWN LINES.

§ 84. When the commissioners of highways of any town shall disagree with the commissioners of any other town of the same county, relating to the laying out of a new road or the alteration of an old road, extending into both towns, or when the commissioners of a town in one county shall disagree with the commissioners of a town in another county, relative to the laying out of a new road or altering an old road which shall extend into both counties, the commissioners of both towns shall meet together, at the request of either disagreeing commissioner, and make their determination upon such subject of disagreement. Meeting of commissioners of adjoining towns in case of disagreement.

§ 85. Whenever the commissioners of highways of any town receive a petition praying the location of a new road, alteration or discontinuing of an old one, upon the line between the two towns, such road shall be laid out, altered or discontinued by two or more of the commissioners of highways of each of said towns, either upon such line or as near thereto as the convenience of the ground will admit; and they may so vary the same, either to the one or to the other side of such line, as they may think proper. The petition in such cases shall be addressed to the commissioners of the two towns, jointly, and presented to each in duplicate. Petition for laying out, alteration or discontinuance of road on town line.

¹ Form of Petition to Board of Supervisors where damages are manifestly too high.

To the board of supervisors of the county of *Stephenson*:

The petition of the undersigned, the supervisor, town clerk, justices of the peace, and the commissioners of highways of the town of *Wadoms*, in said county, respectfully represents that on or about the — day of —, A. D. 18—, application was made to the commissioners of highways of said town of *Wadoms*, to lay out a road as follows: (*here insert the road as prayed for in the petition*,) and the said commissioners did determine that the said road be laid out and opened, and established the same as follows: (*describe the road as laid out*,) from which determination of the commissioners of highways an appeal was taken to A., B., and C., three supervisors of said county; and upon the hearing of said appeal, the said supervisors did determine and order as follows, to wit: (*here state particularly the damages assessed*,) which damages, in the opinion of your petitioners, are manifestly too high, and in providing for the payment thereof an oppressive tax will have to be levied on the property of said town of *Wadoms*.

Your petitioners, therefore, in behalf of said town, pray for relief in the premises, either from the whole or a part of said damages, and that the opening of said road may be postponed until the damages, or a major part thereof, are in some other way provided for than by levying a tax upon the property of said town.

JAMES THOMAS, Supervisor.

JAMES MANNY, Town Clerk.

WILLIAM HAYES, } Justices of the Peace.

SAMUEL BECHTOLD, }

JOHN A. VAN EPS, } Commissioners

NICHOLAS MARSELIS, } of

JOHN SWART, } Highways.

ated this — day of, —, A. D. 18—.

Road on town line, how divided into road districts.

§ 86. It shall be the duty of the said commissioners, when there may be such highway, to divide it into two or more road districts in such manner that the labor and expense of opening, working and keeping in repair such highways through each of the said districts, may be equal, as near as may be, and to allot an equal number of the said districts to each of the said towns.

Road districts on town line, how allotted.

§ 87. Each district shall be considered as wholly belonging to the town to which it shall be allotted, for the purpose of opening and improving the road, and keeping it in repair; and the commissioners shall cause such highway and the petition and allotment thereof to be recorded in the office of town clerk, in each of their respective towns.¹

Roads heretofore laid out on town line.

§ 88. All highways, heretofore laid out upon the line between any two towns, shall be divided, allotted, recorded and kept in repair in the manner above directed.

Roads on state line.
1857.

§ 89. Highways may be laid out and opened upon the line between this and any adjoining state, as provided in the five preceding sections, whenever the laws of such adjoining state shall be applicable.

OPENING HIGHWAYS.

Opening of roads through improved lands.

§ 90. Whenever the commissioners of highways shall have laid out any public highway through any inclosed, cultivated or improved lands, in conformity with the provisions of this act, and their determination shall not have been appealed from, they shall give the owner or occupant of the land through which such road shall have been laid sixty days' notice, in writing, to remove his fences. If such owner does not remove his fences, within sixty days, the commissioners shall cause such fences to be removed, and shall direct the road to be opened and worked; and such owner shall forfeit to the town the sum of fifty cents a day for every day he shall permit his fence to remain, after the expiration of said sixty days.²

Sixty days' notice to remove fences.

Removal of fences.

Forfeiture.
1861.

(1) When a road is located on a dividing line between townships, the commissioners of highways of the towns must create road districts and allot the expense, etc., of keeping up the road among the districts as nearly equal as possible, giving each town an equal number of districts, each road district to be attached to the town in which it lies. Without such an allotment, the road can not be opened, neither of the towns having power to act. *Keach v. The People*, 22 Ills., 473.

The road in such case should be opened by the commissioners of highways of the town to which road districts are allotted; such allotting gives to the commissioners jurisdiction over so much of the road as is contained in the road districts allotted to their town.

² Form of Notice for Removal of Fences.

To MR JOHN SMITH:

You will take notice that the commissioners of highways of the town of *Read*, in the county of *Will*, have laid out a public highway, agreeable to an order of said commissioners, bearing date the — day of —, A. D. 18—, a copy of which is hereunto annexed; which highway passes through certain enclosed (or cultivated, or improved,) lands owned (or occupied) by you. (*It will be well here to describe the premises with reasonable certainty.*) You are therefore hereby notified and required to remove your fences from within the bounds of said highway, within sixty days after the service of this notice.

HENRY WATKINS, } Commissioners
SHELDON YOUNG, } of
HENRY STONE, } Highways.

Dated this — day of —, A. D. 18—.

§ 91. If the determination of the commissioners shall have been appealed from, then the sixty days' notice shall be given, after the decision of the supervisors upon such appeal shall have been filed in the office of the town clerk of the town. Notice to remove fences after appeal.

§ 93. All highways, laid out by order of the commissioners or supervisors, on appeal, shall be opened within five years from the time of laying out the same. If not opened within the time aforesaid the same shall be decreed [deemed] to be vacated.¹ Roads to be opened in five years. 1861.

PRIVATE ROADS.

§ 93. Private roads may be laid out by the commissioners of highways, from the dwelling or plantation of individuals to any public road, or from one public road to another, or from one lot of Commissioners may lay out private roads. 1861.

NOTE.—This notice should be served by leaving a copy with the owner or occupant, and should be served by, or in the presence of, some indifferent person, having no interest in the matter; and a true copy should in all cases be retained by the commissioners, as actual notice must be proved should it ever be questioned, and will not be presumed. The presumption which is sometimes indulged in favor of public officers, does not extend to such a case.—*Case v. Thompson, 6 Wend., 634.*

If fences are removed without giving sixty days' notice, all persons concerned therein are trespassers.—*Kelly v. Horton, 2 Cow., 424.*

An overseer of highways in proceeding to open a road by removal of fences can not justify in an action of trespass, by showing merely an order from the commissioners of highways, directing him to open the road; if the legality of the road is questioned, he must show also that it was in all respects legally laid out and established. The commissioners, and all persons acting under them, must show that a case existed which justified the order issued by them.—*Guptail v. Teft, 16 Ill., 335; Dunning v. Mathews, Id., 308.*

It has been held in numerous instances, that payment or assessment of damages of the owners of lands through which a public highway is laid is not a condition precedent to the right to open the road; and where a law authorizing the taking of private property for public purposes, provides for a just compensation to the owner, it is not unconstitutional because it omits to make the assessment and payment of damages a condition precedent to an entry upon, and occupation of the premises. It is deemed sufficient if the law makes definite and certain provisions for ultimate compensation to the owner.—*Baker v. Johnson, 2 Hill, 342; Smith v. Helmer, 1 Barb., 416; Robottom v. McClure, 4 Black., 505.* But not so, it seems, in case of a railroad or private corporation.—*Bloodgood v. Mohawk & Hudson River R. R. Co., 13 Wend., 9.*

Where commissioners of highways had laid out a road in pursuance of law, but neglected to file their proceedings and a mandamus directed to their successors, commanding them to open it, by mistake misdescribed the road, on application for a rule requiring the defendants to furnish the original application, and that the mandamus be amended thereby, it appeared that the paper sought for had remained in the hands of H., a former commissioner, and was beyond the control of the defendants. Motion, therefore, denied as to the defendants. But a rule was made upon H. that he file a paper with the clerk of the town, &c. or shew just cause why he should not do so.—*People v. Vail, 1 Cow., 539.*

A mandamus to commissioners of highways to open and work a road will be granted without regard to the near approach of the expiration of their offices; when the term of the office expires, their successors must obey the command of the writ.—*People v. Collins, 19 Wend., 56.*

A mandamus is not a proper remedy to try the question of the location of a public highway, as between the public and the landholders over whose land it passes. The court has a discretion in granting or refusing the writ.—*People ex rel. Morgan v. Curyea et al., 16 Ill., 547.*

Where a road is used and traveled by the public as a highway, and is recognized and kept in repair as such, by the authority whose duty it is by law to open and repair public roads, proof of these facts furnishes a legal presumption, liable to be rebutted, that such road is a public highway.—*Eyman v. People, 1 Gilm., 4; Nealy v. Brown, Id., 10.*

Parol evidence is admissible to show where a road is located. Although there should be some uncertainty as to the precise location of the road, yet if the evidence be such as to convince the jury as to its location, it is sufficient for them to act upon.—*Nealy v. Brown, 1 Gilm., 10.*

If the public is to be charged with the abandonment of a road, the proof of the fact must be accompanied by the further proof that another road has been adopted in its stead.

A public road, established by public authority, continues as such until it shall be vacated by a like authority.—*Champlin v. Morgan, 20 Ill., 181.*

(1) It is held in New York, that the road must be completely opened; if any part thereof is permitted to remain fenced up for the space of time in which the road is required to be opened, and the travel turned another way to avoid the field, this will vacate so much of the road as remains fenced up.—*Lyon v. Munson, 2 Cow., 426.*

It seems that a road passing through unimproved and unclosed lands, is considered in contemplation of law, opened when established.—*Ferris v. Ward, 4 Gilm., 499.*

land to another, or from a lot of land to the highway; and whenever any individual desires to have a private road laid out, as aforesaid, such individual may apply to the commissioners of highways to lay out such private road, and the commissioners shall proceed to examine into the merits of such application, and be governed in their proceedings by the rules and regulations prescribed in this act in relation to public roads. The damages assessed, in consequence of the laying out of such private road, shall be paid by the person applying for the same, and, when paid, the persons applying therefor, their heirs and assigns, shall have the right to open said private road, and shall have the right of way upon the same forever thereafter, but not to be converted to any other use or purpose than that of a road.¹

Application for.

Proceedings to lay out.

Damages by whom paid.

For use of person applying.

¹ *Form of Application to Commissioners of Highways, for Private Road.*

To the commissioners of highways of the town of *Waukegan*, in the county of *Lake*:

The undersigned, *Reuben White*, desiring to have a private road laid out from his dwelling to a public road, (*or as the case may be*), does hereby apply to you to lay out a private road, *three rods in width*, (*set forth the width desired*), from his dwelling house in said town, on the most eligible route, to the public road leading from — to —, and intersecting said road at (*or near, &c.*; *describe the route of the private road as desired.*)

Dated this — day of —, A. D. 18—.

NOTE.—The legislature. it would seem, have considered private roads here provided for, somewhat in the nature of public highways, and the taking of land, the private property of individuals, in establishing such roads, may be regarded as a taking by the public. The commissioners of highways, in laying out private roads, as will be seen, are required to proceed and be governed in their proceedings by the rules and regulations prescribed in relation to public roads. It would therefore seem to be necessary that the commissioners, after receiving and granting the application for a private road, should commence by fixing a time and place when and where they will meet to hear reasons offered in the premises, and thereupon cause notices thereof to be posted as in the case of petitions concerning public highways, and thereafter proceed in all respects as near as the nature of the case will allow, as in cases of public roads.

Form of Order of Commissioners of Highways, laying out a Private Road.
Lake County,
Town of Waukegan, } ss.

Whereas, upon the application of *Reuben White* for a private road from his dwelling in said town, to a public road, we, the commissioners of said town, did on the — day of —, A. D. 18—, proceed to examine into the merits of such application, and having, before determining to lay out said private road, fixed upon a time and place when and where we would meet to hear any reasons for or against laying out the same, and having caused written notices thereof to be posted up in three of the most public places in said town, eight days previous to the time of such meeting, and having met according to such notice, and having heard such reasons as were offered for and against laying out said private road, and being of opinion that the laying out thereof is proper, having granted said application, we did, on the — day of —, A. D. 18—, lay out such private road, agreeably to said application, and cause a survey thereof to be made by a competent surveyor, as follows, commencing at, &c., (*here incorporate the survey as rendered by the surveyor.*) We do therefore order and determine, that a private road be and is hereby laid out and established, *three rods in width*, according to said survey, and the plat thereof hereunto annexed: the line of said survey being the center of said private road.

In witness whereof, we, said commissioners, have hereunto set our hands, this — day of —, A. D. 18—.

PHILLIP BLANCHARD, } Commissioners
 A. B. FERGUSON, } of
 EBER HINKSTON, } Highways.

[And all private roads shall not be more than three rods wide.]

OBSTRUCTING HIGHWAYS.

§ 94. If any person shall obstruct any public highway, by ^{Obstructing highways. 1861.} falling a tree or trees across the same, by encroaching upon or fencing up the same, or by placing any other obstruction therein, or by digging a ditch across the same, he shall forfeit to the town, for every such offense, a sum not exceeding ten dollars, and a sum ^{Penalty.} not exceeding one dollar for every day he shall suffer such obstruction to remain after he shall have been ordered to remove the same by a commissioner or overseer of highways of the town: ^{Proviso.} provided,

NOTE.—The forms given in cases of laying out public roads, for agreement as to damages, release of damages, and assessment of damages, can be used in case of private roads, by being varied to suit the occasion.

In the absence of acquiring a private way by express grant or by proceedings under the statute, an uninterrupted use and enjoyment of a right of private way over the land of another for twenty years becomes an adverse enjoyment, sufficient to raise a presumption of a grant. But such use, to be conclusive evidence of a right, must have been continuous, uninterrupted and exclusive; that is, under a claim of right, with the knowledge and acquiescence of the owner. The use of an easement for twenty years unexplained, will be presumed to be under a claim or assertion of right, and adverse, and not by the leave or favor of the owner; and such a use will not only give a title by prescription, but will authorize the presumption of a grant. When a right to a private way is acquired by prescription, or by user of twenty years, it can only be lost by a non-user of twenty years, or by a release. A void proceeding for laying out a private road, or a void grant, may form the basis of an adverse use and enjoyment of an easement in land. The consent of the owner of land, to the laying out of a private road across his land, may be presumed from his acquiescence, and the acquiescence of those deriving title from him, in the uninterrupted use of the road as a private road, by others for twenty years. Such consent will render the proceedings for laying out the road valid.—*Miller v. Garlock*, 8 Barb., 153.

An assessment of damages on laying out of a private road is not subject to the revision or correction of a board of supervisors.—*Craig v. Supervisors*, 10 Wend., 505.

The record of a private road laid out by the commissioners, designating the course, distance and quality of land taken, is sufficiently definite to determine the width of the road, and parol evidence of the result, from the data given, is admissible.

Where a party obtains a right to a private road of the width of two rods, the owner of the land through which it passes must so build his fences as to leave full two rods in width in every part of the road; he can not build a Virginia fence, placing the center on the exterior line of the two rods, with the angles projecting into the road. A party will be deemed, however, to have assented to such location of the fences, if apprised that the damages of the owner of the lands were assessed in reference to such location, or if he permits the fences to be thus built without objection.—*Herrick v. Stover*, 5 Wend., 539. Held, also, *Ibid.*, that where a party obtains a right to a private road, he will be entitled to an action against the owner of the land, if he places his fences ten or twelve feet on the land acquired for the road, unless he has yielded his assent expressly or implicitly to such location. But it seems that if the plaintiff had assented to the location as made, or if he had seen the defendant constructing his fence as it is, and knowing that the angles encroached upon the road and was silent, he would not be permitted to maintain an action for damages.

An obstruction of a private road is a mere private injury, in which the public have no concern.—*Fowler v. Lansing*, 5 Wend., 530.

An obstacle placed in a private road by the owner of the land over which it is laid out, can not lawfully be removed by one having no right to use the road.—*Drake v. Rogers*, 3 Hill, 604.

Where it appeared that a road was from two and a half to three rods wide, that it terminated at A's house without connecting with any other road, that it had never been used by the public, and the record on file with the town clerk described it as a "highway for A., beginning," &c., held, though it also appeared that for many years it had been included in a road district, the evidence did not authorize the court to pronounce it a public highway as a matter of law, but the question should at least have been submitted to the jury. *Seemle.*, that this evidence showed the road to be a mere private one, intended for the accommodation of A.—*Drake v. Rogers*, 3 Hill, 604.

(1) This provision concerning the width of private roads was contained in the township act of 1851, and is not repealed, but remains in force; it is therefore inserted here in its proper order.

(2) Where the owner of the soil dug a race-way across a road to conduct water to his mill, it was held that he must restore it to a traveling condition, and if an injury occurred, though he used the utmost care to prevent it, he was liable in damages; that the right of the owner depended upon mere sufferance; whenever an injury occurred, the race-way would be adjudged a nuisance.—*Dyger v. Schenck*, 23 Wend., 445.

that this section shall not be construed to extend to any person who shall lawfully cut down any tree for use, and who shall immediately remove the same out of the road, nor to any person through whose land a highway shall run, who shall dig a ditch or drain across such highway, and shall keep the same in good repair.¹

Injury to
bridges, a misde-
meanor.
1861.

Punishment.

Penalty for defac-
ing guide-board.

§ 95. Any person who shall purposely remove any plank or timber from any bridge or causeway on any public highway, such person shall be deemed guilty of a misdemeanor, and shall be liable to indictment therefor, and punished by imprisonment not exceeding six months, and shall also forfeit to the town a sum not less than five dollars, nor exceeding one hundred dollars; and any person who shall destroy or deface any guide-board, post or milestone, on any public highway, he shall forfeit to the town a sum of not less than five dollars nor more than twenty-five dollars.

PROSECUTION FOR PENALTIES.

Manner of bring-
ing suits for re-
covery of fines.

Justices have
jurisdiction.
1861.

In name of town.

When town fails
to commence
suit, elector may
sue.
1861

§ 96. All penalties and forfeitures provided in and by this act, where the same shall not exceed one hundred dollars, may be sued for and recovered before any justice of the peace of the proper county, upon whom jurisdiction, in such cases, is hereby conferred; and all proceedings for the recovery of any such penalty or forfeiture shall be in the name of the town to which the same shall be forfeited, unless otherwise provided by this act.

§ 97. In all cases where a penalty or forfeiture shall be incurred by any person, under the provisions of this act; and no prosecution for the same shall be commenced by the town to which the same shall be due, or by the officer or agent whose duty it is to prosecute for the same, within sixty days from the time such penalty or forfeiture shall be incurred, the same may be sued for by any elector of the town, in an action *qui tam*, one-half of the amount recovered to be paid to the person who shall sue therefor, and the other half to the town.

ARTICLE EIGHTEENTH.

MISCELLANEOUS PROVISIONS.

Election pre-
cincts.

Judges of elec-
tion.

Notices.

§ 1. Each town, acting under township organization, shall constitute an election precinct; and the supervisor, assessor and collector shall be, *ex officio*, judges of elections. The supervisor, or in case of his absence, the town clerk, shall post up notices of general elections, in like manner as is now required of sheriffs and county clerks under the general laws of this state, in counties not adopting township organization. The place of holding elections

(1) On a trial under an indictment for obstructing a highway, the questions whether the road was ever worked or recognized by the public authorities, or whether the road was ever used as a public highway, are proper, and the answers should be admitted in evidence.

The description of the road in the indictment is material and must be proved as laid.

The description of a road as leading from A to B is sufficient.—*Martin v. People*, 23 Ill.,

shall be at some central and convenient place in the town, to be fixed by the supervisors or town clerk, as the case may be.

Place of holding.
1861.

§ 2. The county judge, sitting as a county court, without associates, in counties acting under township organization, shall have the same jurisdiction of suits brought by collectors for taxes on delinquent lands and town lots as the county courts have under existing laws; and all acts of county courts, heretofore done in suits for taxes on delinquent lands and town lots are hereby legalized.

Jurisdiction of
county judges in
case of delin-
quent taxes

Acts legalized

§ 3. The cities of Chicago and Peoria shall be entitled to elect one supervisor in each ward, in addition to the township supervisors, and the several supervisors so elected shall be members of the board of supervisors of the county, and shall have, possess and enjoy all the rights, powers and privileges that are now or hereafter shall be possessed and enjoyed by the several township supervisors, as members of the board of supervisors of the county. The election for such supervisor to be held at the same time and in the same manner as the election for township supervisors in the counties in which said cities are situated.

Special provision
in relation to Pe-
oria and Chicago.

Ward supervi-
sors.

When elected.

§ 4. Upon the petition of fifty legal voters of any county acting under township organization, it shall be the duty of the county clerk, upon the filing of such petition with him, to cause notices to be posted up in three of the most public places in each town of such county, at least twenty days previous to the next annual town meeting, that the question of township organization, under this act will be voted upon. At such meeting said vote shall be taken by ballot, to be written or printed, or partly written and partly printed, "for township organization," or "against township organization," and shall be canvassed and returned in like manner as votes for state and county officers.

Vote on abolish-
ing of township
organization.

§ 5. If it shall appear, by the returns of said election, that a majority of all the voters, voting at such election, have voted against township organization, then the county so voting shall cease to act under such organization, from and after the election and qualification of such county officers as are provided for in such counties as have never adopted township organization.¹

Effect of vote to
abolish.

§ 6. At the next general election after the voters of any such county have determined against township organization, there shall be an election for all the officers required by law in counties that have never adopted township organization, except such officers as may have been previously elected and are entitled to hold over; and notice of such election shall be given as is now provided by law.

Election of offi-
cers in case abol-
ishing prevails.

§ 7. That at the first town meeting in each town, under this act, in counties that have or may hereafter adopt township organization, there shall be elected three commissioners of highways, one

Three highway
commissioners to
be elected at first
town meeting.

(1) Though the constitution makes no provision for the abandonment of the township organization system, yet the legislature may provide for its abrogation by pursuing the same course, and adopting the same guarantees to protect the rights of all, which the constitution requires in the adoption of the system; that is, it should be done at a general election, and by a majority of all the voters.—*The people ex rel. v. Councman*, 15 Ills., 142.

1861 of which shall hold his office for one year, one for two years, and one for three years. Said commissioners shall meet at the office of the town clerk at a day and hour to be fixed by said clerk, within ten days after the town meeting, of which he shall give each commissioner three days' notice, when and where said commissioners shall meet to determine their respective term; of office.¹

To draw lots for terms.

§ 8. At such time and place the town clerk shall prepare three separate pieces of paper, as near alike as practicable; on the first of which shall be written the number "one," on the second the number "two," and on the third the number "three"; and he shall cause them to be folded up alike, as near as practicable, and deposited in a box; and the persons elected commissioners shall severally draw one of the said pieces of paper, and the term of office of each such commissioner shall be determined by such drawing, and each shall hold his office for the number of years corresponding with the number by him drawn.

Manner of drawing lots.

1861

Term of office determined by drawing.

Neglect of commissioner to attend and draw.

§ 9. If any person elected a commissioner shall neglect to attend at the time and place specified in the preceding section, the town clerk shall select some qualified elector of the town to draw for said commissioner, in the manner prescribed in the preceding section; and the number drawn by such elector shall be a lawful determination of the term of office of said commissioner.

1861.

§ 10. All laws and parts of laws in conflict with the provisions of this act, are hereby repealed, saving and excepting laws of a local or private nature; and nothing herein contained shall be construed as repealing an act entitled "an act to change the time of holding town meetings in the county of Cook," approved February 24th, 1859, or an act entitled "an act to amend an act entitled an act to provide for township organization," approved February 21st, 1859, which applies to Cook county only.

Prior laws in conflict repealed.

Proviso relative to Cook county.

1861.

§ 11. This act shall take effect on the first day of April next, A. D. 1861, and shall be in force on and after that day.

When act to take effect.

Nothing in this act contained shall prevent the towns of East and West Galena from electing an assistant supervisor in each of said towns, in addition to the town supervisor; but said towns of East and West Galena are each empowered to elect an assistant supervisor, so as to make two supervisors in each of said towns, in addition to the ward supervisors of the city of Galena, allowed by law.

Proviso relative to Galena.

1861.

Approved, February 20th, 1861.

(1) NOTE.—Should the town clerk fail to give notice for the meeting of the commissioners of highways, or the commissioners fail to meet as here provided, they can meet at any other date after the expiration of the ten days, and decide their term of office by lot.

DIVISION II.

ELECTIONS.*

(From Chapter 37 of the Revised Statutes.)

SECTION 1. (Repealed.)

SEC. 2. The clerks of the several county commissioners' courts, shall, within eight days next after holding an election for electors as is provided for in this chapter, make three copies of the abstract of votes for electors, and transmit by mail one of said copies to the governor or person administering the government, another to the office of the secretary of state, and retain the third in his office, to be sent for by the governor, in case both the others should be mislaid. Within twenty days after the holding of such election, and sooner if all the returns are received by either the governor or person administering the government, or by the secretary of state, the secretary of state, auditor of public accounts and treasurer, or any two of them, shall, in the presence of the governor or person administering the government, proceed to open and canvass said election returns, and to declare the persons having the highest number of votes elected; but should any two or more persons be returned with an equal and the highest vote, the said secretary of state shall cause a notice of the same to be published in the paper printed by the public printer, which notice shall name some day and place, not less than five days from the time of the publication of such notice, upon which the said secretary, auditor and treasurer, will decide by lot which of said persons so equal and highest are elected; and upon the day and at the place so appointed in said notice, the said secretary, auditor and treasurer, or any two of them, shall, in the presence of the governor or person administering the government, decide by lot which of the persons so equal and highest shall be elected.

Abstract of votes for electors to be transmitted to the governor.

Governor, with other state officers to canvass returns and declare the result.

The vote how decided.

SEC. 3. The governor or person administering the government, shall cause the result of the said election to be published in the paper printed by the public printer, and shall transmit by mail to the persons elected, certificates of their election.

Governor to cause result to be published.

SEC. 4. The electors chosen as aforesaid, shall meet at the seat of government of this state, at the time appointed by the laws of the United States, and give their votes in the manner therein provided, and perform such duties as are or may be required by law. Each elector shall receive for every twenty miles necessary travel in going to the seat of government to give his vote, and in returning to his residence, to be computed by the most usual route, the sum of three dollars, to be paid on the warrant of the auditor, out of any money in the treasury not otherwise appropriated.

Electors to meet and give their votes.

Compensation of electors.

*See Registry Law, Appendix, p. 206.

Vacancy in electoral college, how filled.

SEC. 5. In case any person, declared duly elected an elector of president and vice president of the United States, shall fail to attend at the state house, at the seat of government of this state, at or before the hour of twelve o'clock at noon, of the day on which his vote is required to be given, it shall be the duty of the elector or electors of president and vice president, attending at that time and place, to appoint a person or persons to fill such vacancy: *Provided*, That should the person or persons, chosen by the people as aforesaid, arrive at the place aforesaid, before the votes for president and vice president are actually given, the person or persons appointed to fill such vacancy, shall not act as elector of president and vice president.

Proviso.

SEC. 6. (Repealed.)

Election precincts, how formed.

SEC. 7. The county commissioners' courts of the several counties in this state, are hereby authorized to divide their respective counties into as many election precincts, for all general and special elections, as they may think expedient for the convenience of the voters of said county, and to appoint as many sets of judges of elections, to receive votes at the county seats, as they may think necessary; and shall designate the house or place in each precinct, and in the precinct including the county seat, the house or houses, place or places, at which elections are to be holden; and the precincts and places of holding elections, so established, shall so remain until changed by the county commissioners' court: and all general and special elections shall be held at the places so designated, until changed as aforesaid: *Provided, always*, That it shall be the duty of the county commissioners' court at any time, to change any place of holding elections, upon a petition of a majority of voters residing within the precinct.

Judges of election, how appointed.

SEC. 8. The said county commissioners' courts shall, respectively, at the last stated term preceding any election, appoint three capable and discreet persons, possessing the qualifications of electors, to act as judges of the election in each election precinct; and the clerk of the said court shall make out and deliver to the sheriff of the county, immediately after the appointment of said judges, a notice thereof in writing, directed to the judges so appointed; and it shall be the duty of the said sheriff, within twenty days after the receipt of said notice, to serve said notice upon each of the said judges of election.

Judges of election to appoint clerks.

SEC. 9. The said judges of the election shall choose two persons, having similar qualifications with themselves, to act as clerks of the election. The said judges of the election shall be and continue judges of all elections of civil officers to be held within their precinct, until other judges shall be appointed as hereinbefore directed; and the said clerks of election may continue to act as such during the pleasure of the judges of the election. And the county commissioners' courts shall, from time to time, fill all vacancies which may take place in the office of judge of the election, in any election precinct within their respective counties.

Notice of election to be given.

SEC. 10. The clerks of the several county commissioners' courts

shall, at least thirty days previous to any general election, and at least twenty days previous to any special election, make out and deliver to the sheriff of his county, three written notices thereof for each precinct, said notices to be, as nearly as circumstances will admit, as follows, to wit :

"Notice is hereby given, that on Monday, the day of , next, at Form of notice.
the house of in precinct, in the county of , an election will be
held for governor, one lieutenant governor, one representative to the con-
gress of the United States, one senator, three representatives in the general
assembly of this state, one sheriff, one coroner, three county commissioners,
&c., (as the case may require,) which election will be opened at eight o'clock
in the morning, and will continue open until six o'clock in the afternoon of
the same day. Dated at , this day of , in the year of our Lord
one thousand eight hundred and A. B.,
clerk of the county commissioners' court of county."

And the said sheriff to whom such notices shall be delivered as aforesaid, shall post up in three of the most public places in each precinct, the three notices referring to such precinct, at least fifteen days before the time of holding any general election, and at least eight days before the time of holding any special election.

SEC. 11. If any person appointed to act as a judge of the election as aforesaid, shall neglect or refuse to be sworn or affirmed to act in such capacity, the place of such person shall be filled by any justice of the peace, residing within the precinct, to be nominated by the other judge or judges of the election; and if there be no other justice present to act as judge, the other judge or judges of the election shall nominate one or more capable and discreet elector or electors, residing within the precinct, to fill such vacancy or vacancies; and if there be no judge of the election present to fill such vacancy or vacancies by nomination, then such vacancy or vacancies shall be filled by the votes of such qualified electors, residing within the precinct, as may then be present at the place of election; and the justice or justices, person or persons, so elected or nominated to fill such vacancy or vacancies, shall be, and are hereby vested with the same power as if appointed by the county commissioners' court.

Vacancy in office
of judge of elec-
tion how filled.

SEC. 12. Previous to any votes being taken, the judges and clerks of the election shall severally take an oath or affirmation, in the following form, to wit :

Judges and clerks
to be sworn.

"I, A. B., do solemnly swear, (or affirm, as the case may be,) that I will perform the duties of judge, (or clerk, as the case may be,) according to law and the best of my ability; that I will studiously endeavor to prevent fraud, deceit and abuse, in conducting the same."

SEC. 13. In case there shall be no judge or justice of the peace present at the opening of the election, or in case such judge or justice shall be appointed a judge or clerk of the election, it shall be lawful for the judges of the election, and they are hereby empowered to administer the oaths or affirmations to each other, and to the clerks of the election; and the person administering such oaths or affirmations, shall cause an entry thereof to be made and subscribed by him, and prefixed to the poll-books.

Judges may ad-
minister oaths to
each other.

Polls when opened and closed.

Proviso.

Polls may be kept open longer.

Penalty for voting more than once.

After oath, vote to be received unless proved to be false.

Penalty for voting when not qualified.

Constables to attend and keep order.

Judges may appoint constables; and impose fines for disorderly conduct.

SEC. 14. At all elections to be held under this chapter, the polls shall be opened at the hour of eight in the morning, and continue open until six o'clock in the afternoon of the same day, at which time the polls shall be closed: *Provided, however,* That if no judge shall attend at the hour of eight in the morning, and it shall be necessary for the electors present to appoint judges to conduct the election, as hereinbefore prescribed, the election may, in that case, commence at any hour before the time for closing the polls shall arrive, as the case may require: *And, provided also,* That the judges of the election may, if they shall deem it necessary, for the purpose of receiving the votes of all the electors wishing to vote, postpone the closing of the polls until twelve o'clock at night. And upon opening the polls, one of the clerks, under the direction of the judges, shall make proclamation of the same, and thirty minutes before the closing of the polls, proclamation shall be made in like manner, that the polls will be closed in half an hour.

SEC. 15. (Repealed.)

SEC. 16. (Repealed.)

SEC. 17. If any elector shall vote more than once at any election held under the authority of this chapter, he shall be fined, in the sum of one hundred dollars, to be recovered by indictment before any court of competent jurisdiction; and the whole of such fine shall be appropriated to the use of the county in which the offence may have been committed.

SEC. 18. (Repealed.)

SEC. 19. If any person so offering his vote at such election, shall take such oath or affirmation, or shall offer to take such oath or affirmation, as prescribed in the preceding section, his vote shall be received, unless it shall be proved by evidence satisfactory to a majority of the judges that such oath or affirmation is false; and if such person shall refuse to take such oath or affirmation, his vote shall be rejected; and if any person shall take the oath or affirmation as is before named, knowing such oath or affirmation to be false, he shall be deemed guilty of wilful and corrupt perjury and punished accordingly.

SEC. 20. If any person shall vote at any election, who is not a qualified voter, he shall forfeit and pay any sum not exceeding fifty dollars, nor less than twenty-five, to be recovered in the same manner as other penalties under this chapter.

SEC. 21. For the preservation of order, as well as the security of the judges and clerks of the election from insult and abuse, it shall be the duty of any constable or constables residing within the precinct, who shall be designated for the purpose, by the judges of the election, to attend at all elections within such precinct; and should no constable attend at such election, the judges of election are hereby authorized and empowered to appoint one or more special constables to assist in preserving order during the election; and the judges are hereby empowered to impose a fine, not exceeding twenty dollars, on any person or persons who shall conduct in a disorderly and riotous manner, and persist in such conduct after

having been warned of its consequences; and on refusal to pay the same, to commit him or them to the common jail of the county, for any time, not exceeding twenty days, or until the fine shall be paid; and the constable to whom the order shall be directed, and the jailer of the county, are hereby required to execute such order, and receive such person or persons so committed, as though it had been issued or delivered by a magistrate in due form of law.

SEC. 22. The county commissioners' court in each county, may, if necessary, appoint some constable to attend each precinct, and preserve order during said election; and the said constable shall have authority to call to his aid a sufficient number of citizens to suppress any riot or other disorderly conduct during said election, and there shall be paid to said constable out of the county treasury, a sum not exceeding one dollar a day for said services. Commissioners' court may appoint constable.

SEC. 23. When the votes shall have been examined and counted, the clerks shall set down in their poll books, the name of every person voted for, written at full length, the office for which such person received such vote or votes, and the number he did receive, the number being expressed in words at full length; such entry to be made as nearly as circumstances will admit, in the following form, to wit: Clerks to make abstract of votes.

"At an election held at the house of in precinct, in the county of and State of Illinois, on the day of in the year of our Lord one thousand eight hundred and , the following named persons received the number of votes annexed to their respective names, for the following described offices, to wit:

A B had fifty-three votes for Governor.

C D had fifty-one votes for Governor.

E F had sixty-two votes for Lieutenant Governor.

G H had sixty votes for Lieutenant Governor.

I K had eighty votes for representative in Congress.

L M had seventy-three votes for senator.

N O had sixty-five votes for representative.

P Q had fifty-nine votes for representative.

R S had fifty-seven votes for sheriff.

T U had twenty-two votes for coroner.

V W had thirty votes for county commissioner.

(and in the same manner for any other persons or officers, voted for.)

"Certified by us,

A B, }
C D, }
E F, }

Judges of the election.

Attest:

G H, }
I J, }

Clerks of the election."

SEC. 24. (Repealed.)

SEC. 25. On the seventh day after the close of the election, or sooner, if all the returns be received, the clerk of the county commissioners' court, taking to his assistance two justices of the peace of his county, shall proceed to open the said returns, and make abstracts of the votes in the following manner: the abstract of the votes for Governor and Lieutenant Governor shall be on one sheet, and the abstract of votes for representatives to Congress shall be on another sheet, and the abstract of votes for senator and repre- County clerk when to open returns. Manner of making abstract.

Clerk to give certificate of election.

sentatives to the General Assembly shall be on another sheet, and the abstract of votes for county officers shall be on another sheet; or if the election shall have been holden for Presidential electors, the abstract of votes shall be on one sheet; and it shall be the duty of the said clerk of the county commissioners' court, immediately to make out a certificate of election to each of the persons having the highest number of votes for senator and representatives to the General Assembly and county officers, respectively, and to deliver such certificate to the person entitled to it, on his making application for that purpose to the clerk at his office.

Where two or more counties are in one district, votes to be compared in senior county.

SEC. 26. But where two or more counties are united in one senatorial or representative district, the clerk of the county commissioners' court of the county last established, shall, within twelve days after the day of the election, attend at the office of the clerk of the county commissioners' court of the senior county, and there, in conjunction with the clerk or clerks of the senior county or counties, shall compare the votes given in the several counties composing such senatorial or representative district; and said clerks shall immediately make out a certificate of the election of the person or persons having the highest number of votes in such counties for senator or representative to the General Assembly: which certificate shall be delivered to the person entitled to it, on his application to the clerk of the county commissioners' court of the senior county, at his office; and it shall be the duty of the county commissioners' court of the county where the polls are so compared, to compute the number of miles each clerk or other person shall travel in going and returning from the county where he is so appointed, to the place of comparing the polls; and it shall be the duty of the county commissioners' court, where the polls are so compared, to make an allowance to said clerks or other persons who may take the vote of each county aforesaid, a compensation, not exceeding six cents per mile, going to and returning from said place of comparing, to be paid equally out of the county treasuries of the respective counties in which said clerk or other person may be appointed; and it shall be the further duty of the county commissioners' courts when the polls are so compared, to make an estimate of all the expense so incurred by the counties respectively voting together, and divide the same among said counties so voting, respectively, and shall give to each clerk or other person a certified statement of the same, under the seal of said court; and it shall be the duty of the county commissioners' court of the county where said clerk or other person shall be appointed, on the production of said certified statement, to pay to said clerk or other person the amount which appears to be due him out of the county treasury.

Certificates of election given.

Expense of canvass, how paid.

Compensation of judges and clerks of elections, how allowed and paid.

SEC. 27. It shall be the duty of the clerk of the county commissioners' court in each county, on the receipt of the election returns of any general or special election, to make out his certificate, stating therein the compensation to which the judges and clerks of each election may be entitled for their services, and lay

the same before the next commissioners' court of the county; and the said court shall order the compensation aforesaid to be paid out of the county treasury.

SEC. 28. If the requisite number of senators or representatives, or county officers, shall not be elected by reason of any two or more persons having an equal and the highest number of votes for one and the same office, the clerk or clerks whose duty it is to compare the polls, shall give notice to the several persons so having the highest and an equal number of votes, to attend at the office of the proper clerk, at a time to be appointed by the said clerk or clerks, who shall then and there proceed publicly, to decide by lot, which of the persons so having an equal number of votes shall be declared duly elected; and the said clerk or clerks shall make out and deliver to the person thus declared duly elected, a certificate of his election as herein before provided.

Tie vote between candidates, how decided.

SEC. 29. The clerk of the county commissioners' court, immediately after making out abstracts of votes given in his county, shall make a copy of each of said abstracts, and transmit it by mail to the office of the secretary of State; the abstract of votes for Governor and Lieutenant Governor being addressed to the speaker of the house of representatives, and inclosed with the other abstracts to the secretary's office as aforesaid; and it shall be the duty of the secretary of State, at the opening of the succeeding session of the General Assembly, to deliver all such abstracts of votes for Governor and Lieutenant Governor, or for either of them, to the speaker of the house of representatives.

Clerk to make copy of abstracts and transmit by mail to secretary of state.

SEC. 30. The secretary of State, auditor, treasurer and attorney general, or any two of them, in the presence of the Governor, shall proceed, within fifty days after the election, and sooner if all the returns be received, to canvass the votes given for representatives to Congress; and the Governor shall grant a certificate of election to the person or persons having the highest number of votes, and shall also issue a proclamation, declaring the election of such person or persons. In case there shall be no choice, by reason of any two or more persons having an equal number of votes, the election shall be determined by lot, under the direction of the Governor, in the manner prescribed in the twenty-eighth section of this chapter.

Votes for congress, how canvassed.

Tie vote how decided.

SEC. 31. If the returns of the election of any county in this State, shall not be received at the office of the secretary of State, within thirty days after the day of election, the said secretary shall forthwith send a messenger to the clerk of the county commissioners' court of such county, whose duty it shall be to furnish the said messenger with a copy of such returns; and the said messenger shall be paid out of the State treasury the sum of ten cents for each mile he shall necessarily travel in going to, and returning from the office of the said clerk.

Where returns are delayed thirty days, messenger to be sent.

SEC. 32. When any vacancy shall happen in the office of senator or representative to the General Assembly, by death, removal or otherwise, it shall be the duty of the clerk of the county com-

Vacancy in office of senator or representative how filled.

missioners' court of the county, if one county only compose the senatorial or representative district, as soon as he shall have been informed thereof, to notify the Governor of such vacancy, and if there be more than one county comprised within the limits of such senatorial or representative district, it shall be the duty of the clerk of the county commissioners' court of the senior county in such district, so to notify the Governor, and the Governor shall issue a writ of election, directed to the sheriff of the county in which such vacancy shall happen, commanding him to notify the several judges of election in his county, to hold a special election to fill such vacancy or vacancies, at a time to be appointed by the Governor: *Provided*, That if there is to be no session of the General Assembly between the happening of such vacancy and the time of the general election, it shall not be necessary to order a special election to fill such vacancy.

Proviso.

When short notice may be given.

SEC. 33. Elections to fill vacancies in either branch of the general assembly, occurring during the sessions of the legislature, may be held on such notice, not less than five nor more than twenty days, as the Governor may direct in the writ of election issued to fill such vacancy.

Vacancy in office of governor how filled.

SEC. 34. If any vacancy shall happen in the office of Governor by death, resignation, removal from office, or refusal by the Governor elect to take the requisite oath of office, it shall be the duty of the secretary of State to notify the clerks of the county commissioners' courts of the several counties in this State, that at the next succeeding general election of members of the General Assembly, or electors of President and Vice President, (as the case may be,) an election will be held to fill such vacancy: *Provided, however*, That the secretary shall not give such notice, nor shall such special election of Governor take place unless the vacancy shall have happened at least forty days previous to such general election for members of the General Assembly, or of electors of President and Vice President of the United States, nor unless a regular session of the General Assembly shall intervene between the time when such vacancy shall have happened and the succeeding quadrennial election of Governor.

Proviso.

Vacancy in office of sheriff or coroner, how filled.

SEC. 35. When any vacancy shall happen in the office of sheriff or coroner, either by death, resignation or otherwise, the clerk of the county commissioners' court in which such vacancy shall happen, shall immediately notify the Governor of such vacancy; and it shall be the duty of the Governor to issue a writ of election, and direct the time when such election shall be held, the said writ to be directed to the said clerk.

Vacancy in congressman how filled.

SEC. 36. When any vacancy shall happen in the office of representative to Congress from this State, it shall be the duty of the Governor to issue his proclamation, appointing a day to hold a special election to fill such vacancy.

Penalty for malfeasance in judge

SEC. 37. If any judge of the election, or clerk, or any other officer or person in any manner concerned in conducting the elec-

tion, shall willfully neglect, improperly delay or refuse to perform or clerk of election any of the duties required by this chapter, after having undertaken to perform such duties, he shall forfeit and pay to the State the sum of forty dollars; and if any such judge of the election, clerk or other officer or person, in anywise concerned in conducting the election, shall knowingly admit any person to vote, not qualified according to law, or shall knowingly receive and count more than one vote from one person, at the same election for one office, or shall be guilty of fraud, corruption or partiality, or manifest misbehavior, in any matter or thing relating to said election, each and every person so offending shall forfeit and pay to the county the sum of one hundred dollars, to be recovered in any court of record in the State, in the name of the State for the use of the county, in an action of debt, with costs of suit, or at the suit of any person who may sue for the same, one-half for the use of the person suing and the other half for the use of the county; and every such person so offending as aforesaid, shall moreover, on conviction, be rendered incapable of holding any office within this State for the term of ten years thereafter.

Penalty how recovered.

SEC. 38. Nothing in this chapter shall be so construed, as to prevent the judges of election from refusing to receive the vote of any person when it shall be proved to the satisfaction of a majority of them, that in taking the said oath he shall have sworn falsely. And if any judge of election shall order to be received the vote of any person who, being challenged, shall not take the oath or affirmation prescribed by law, such judge of election, so offending, shall forfeit and pay the sum of fifty dollars, to be recovered by action of debt, in the name of the State, or of any person suing therefor, the one-half of said fine for the use of the county, and the other half for the use of the person suing.

When judge not liable to penalty.

Penalty for receiving vote when challenged.

SEC. 39. (Repealed.)

SEC. 40. If the clerk of the county commissioners' court shall neglect or refuse to perform the duties as pointed out in this chapter, he shall be liable to be indicted, and on conviction shall be fined, in a sum not exceeding five hundred dollars, and imprisoned, not exceeding thirty days, and may be sued in an action of trespass on the case, for damages, not exceeding five hundred dollars, by the person injured by reason of the neglect or refusal of such clerk.

Penalty where clerk refuses to perform duty.

SEC. 41. If any person shall mutilate or erase any name or figure, or word, in a poll book taken or kept at any election, or if any person shall take away such poll book from the place where it has been deposited for safe keeping, with an intention of destroying the same, or to procure or prevent the election of any person, or if any person shall destroy any poll book so taken and kept at any election, he or she shall be liable to be indicted, and on conviction, shall be fined five hundred dollars, and imprisoned, not exceeding sixty days in the county jail.

Penalty for taking away poll books willfully.

SEC. 42. When any candidate shall desire to contest the validity of an election, he shall file with the clerk of the county a written statement of the grounds of his contest, and shall pay to the clerk the sum of fifty dollars, to be used for the expenses of the election.

Elections how contested.

Justice to be named.

of any election, or the right of any person declared duly elected, to hold the office to which such candidate claims the right, such candidate shall give notice of his intention in writing, to the person whose election he intends to contest, or leave a notice thereof at his usual place of residence, within thirty days after the day of election, expressing the points on which the same will be contested, the name of one of the justices of the peace who will attend at the taking of the depositions, the place where, and the time when the said depositions will be taken; which time so fixed upon for the taking of the depositions, shall not exceed sixty days from the day of election.

Other party to name a justice.

SEC. 43. The party whose election is contested, may select another justice of the peace to attend at the trial. Should the party whose election is contested, refuse or neglect to select a justice as aforesaid, the justice chosen by the person contesting the election as aforesaid, shall make such selection for him. The two justices so selected or chosen, shall make choice of a third justice; and if they can not agree upon a third justice to act with them, they shall make such selection by lot; and the three justices thus selected, or either of them, shall have power, and they are hereby authorized and required, to issue subpoenas and such other process as may be necessary to secure the attendance at such trial, of all persons whose testimony may be required by either party, in the same manner as is provided in other cases of proceedings before justices of the peace.

Two justices to choose a third.

Power to raise subpoenas.

Power to issue subpoenas to any county.

SEC. 44. The said justices, or any one of them, shall, in all such cases, have power to issue subpoenas for witnesses to any county in this State, directed to the sheriff of such county, who shall make service and return as in other cases. And any witness duly subpoenaed, refusing or neglecting to appear and testify, shall, in addition to the penalties otherwise imposed by law, forfeit and pay a fine of fifty dollars, to be recovered by action of debt, in any court having cognizance thereof, one-half to the county, and one-half to the person suing for the same.

Penalty where witness refuses to appear and testify.

Justices may issue attachments for witnesses.

SEC. 45. The said justices, or any one of them, may issue attachments for witnesses so neglecting or refusing to attend, who may be brought before them; and at any time before the day for the decision of the question between the contesting parties, the said justices shall, at the request of either, after giving notice to the other party of five days, if resident in their county, or ten days, if residing out of their county, proceed to take the testimony of such witnesses, to be used in the case.

Penalty where justice refuses to attend.

SEC. 46. If any justice of the peace selected as aforesaid, to attend at the taking of the depositions, shall, without reasonable excuse, fail or refuse to attend at the time and place appointed, after having undertaken to attend, he shall forfeit and pay a fine of fifty dollars, to be recovered by action of debt, in any court having cognizance thereof, one-half to the county, and the other half to the person who will sue for the same.

Justices to hear evidence, and decide contest.

SEC. 47. The said justices shall hear and examine all the evi-

dence offered on either side. If the contest be respecting any county office, they shall decide which of the said candidates shall have been duly elected, and certify the same to the clerk of the county commissioners' court of the proper county, who shall thereupon make out and deliver to the successful party a certificate of his election. If such contest be respecting a seat in the Senate or House of Representatives of this State, the said justices shall hear and reduce to writing, all the testimony taken in the case, and certify and transmit the same under seal, together with all other papers and documents pertaining to the case, to the speaker of the Senate or House of Representatives as the case may be.

Duty in case of representatives and senators.

SEC. 48. No testimony shall be heard by the said justices on the part of the person contesting the election, which does not relate to the points specified in the notice. Such justices shall have power to appoint a clerk, and may adjourn from day to day, until their duties shall be completed. They shall have the same power to preserve order, and to punish disorders and contempts, as justices of the peace may exercise, when holding court.

Testimony must conform to notice; appoint clerk and preserve order.

SEC. 49. In all contests for county offices, in which the justices hearing the case, are authorized to decide, they shall enter judgment on the docket of the justice last chosen, for all the costs of such contest, against the unsuccessful party, upon which execution may issue as in other cases. Either party may appeal from the decision of such justices to the circuit court as in other cases of appeal from the judgment of a justice of the peace, the decision of which court shall be final.

Justices to enter judgment.

Appeal allowed.

SEC. 50. In all contests other than for county offices, the proceedings for taking testimony hereinbefore provided, may be had in each county in which it is necessary to take testimony, and the like returns shall in each case be made. In those cases in which the justices examining, do not decide the contest, they shall not be compelled to certify or transmit the testimony and documents pertaining to the case, until the reasonable costs of the examination and of certifying the same, are tendered or paid; and the party who is finally unsuccessful shall be liable for such costs, to the person who shall have paid the same. But if neither party shall require or cause such testimony and documents to be transmitted, then judgment may be entered and execution had, as before provided, against the party at whose instance such examination was instituted.

Testimony how and where taken.

SEC. 51. In all elections by the General Assembly, or by either house thereof, (elections of justices of the supreme court, and judges of inferior courts excepted,) the members shall vote *viva voce*, and their votes shall be entered upon their journals. Elections by joint vote of the two houses shall be made in the hall of the house of representatives, at such time as shall have been previously appointed by joint resolution of the two houses; and at all such joint meetings, the speaker of the house of representatives shall preside. Elections of justices of the supreme court and judges of inferior courts shall be made by joint ballot of both

Elections by the general assembly, *viva voce*.

Election by joint vote, where made.

Majority vote required.

houses, in the hall of the house of representatives, the speaker of which shall appoint a member of each house to act as tellers. No person shall be declared duly elected by the General Assembly, or either branch thereof, until he shall have received a majority of all the votes given, blank votes included.

Penalty for betting on election.

SEC. 52. If any person shall, at any time hereafter, bet or wager any money, property or other valuable thing, upon the result of any election which may be held under the constitution or laws of this State, or shall bet or wager money, property or other valuable thing, upon the number of votes which may be given to any one or more persons, at any election held as aforesaid, or upon who will receive the greatest number of votes at any such election; or if any person shall agree to pay to any other person, any money, property or other valuable thing, in the event that any election as aforesaid shall result in one way, or in the event that any one or more persons shall or shall not be elected, or shall receive a greater number of votes than others, such person shall be liable to indictment, and, upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars.

Offence complete where wager is not staked.

SEC. 53. It shall not be necessary to the commission of the offence specified in the foregoing section, that the money, property or valuable thing, bet or wagered, shall be exhibited or staked at the time of making such bet or wager, or at any other time.

APPROVED: March 3, 1845.

An Act to provided for the mode of voting by ballot, and for the manner of returning, canvassing and certifying votes.

Presidential electors.

SECTION 1. *Be it enacted by the people of the state of Illinois, represented in the General Assembly,* That there shall be elected by general ticket on the Tuesday next after the first Monday in November, preceding the expiration of the term of office of each president of the United States, as many electors of president and vice president of the United States as this state may be entitled to elect; which election shall be conducted and returns thereof made as hereinafter provided: *Provided,* that if congress should hereafter fix a different day for such election, then the election for electors shall be held on such day as shall be named by act of congress.

Proviso.

Time of election of state officers.

§ 2. All general elections for the election of governor, lieutenant governor, secretary of state, auditor of public accounts, state treasurer, representatives to congress, senators and representatives to the general assembly and county officers, shall be held on the Tuesday next after the first Monday of November biennially, except for such offices as are directed to be chosen at other times than biennially; which elections shall be conducted as is directed by this act and the act to which this is an amendment.

Election for judges of supreme court.

§ 3. That an election shall be held in this state on the first Monday of June, eighteen hundred and fifty-two, and every ninth year thereafter, for one judge of the supreme court from the first

grand division; on the first Monday of June, eighteen hundred and fifty-five, and every ninth year thereafter, for one judge of the supreme court from the third grand division; and on the first Monday of June, eighteen hundred and fifty-eight, and every ninth year thereafter, for one judge of the supreme court from the second grand division; and the present judges of the supreme court shall respectively hold their offices till the time fixed by this section for an election of a judge from the division for which such judge may have been elected.

§ 4. That on the first Monday of June, one thousand eight hundred and fifty-five, and every sixth year thereafter, an election shall be held in each judicial circuit for the election of a judge for such circuit: *Provided*, that whenever an additional judicial circuit shall be created, the first election of a judge for such circuit shall be held at such time as the law creating such circuit shall direct, but whose term of office shall expire at the time fixed for the next regular election of judges for the judicial circuits of this state. For judges of circuit court.
Proviso

§ 5. That in case of any vacancy in the office of judge of the supreme or circuit courts of this state within one year of the time fixed by this act for an election of such judge, it shall be the duty of the governor to appoint a judge to fill such vacancy, who shall hold his office till the time fixed by this act for the election of judges for such court; but if any vacancy shall occur more than one year previous to the time fixed by this act for the election of such judge, it shall be the duty of the governor to issue writs of election to the several counties that may be entitled by law to vote for such judge, fixing the time for the holding of said election, and requiring said sheriffs to give twenty days' notice of the time and place of holding said elections; which elections shall be conducted in the same manner as if the election of such judge had taken place at the regular time fixed by law. Vacancies provided for.

§ 6. In case the right of any person claiming to be elected a judge of the supreme or circuit court shall be contested, the contest shall be conducted and the evidence taken in the same manner now provided by law for contesting the election of members of the general assembly, and the evidence, when taken, if it relate to the election of a judge of the supreme court, it shall be transmitted to the speaker of the senate, and if it relate to a judge of the circuit court it shall be transmitted to the clerk of the supreme court of the grand division in which a sitting of the supreme court is first directed to be held after such contest shall have commenced. Proceedings in contested election.

§ 7. In case of a vacancy in the office of clerk of the circuit court, it shall be the duty of the judge of said court to appoint a clerk, who shall hold his office until the next regular election for county officers, or members of the general assembly, whichever may first happen, at which election such vacancy shall be filled; and in case of a vacancy in the office of clerk in the supreme court in either of the grand divisions, the judges of the supreme Vacancies, how filled.

court shall appoint a clerk, who shall hold his office until the time fixed by the constitution for the election of such clerk; and in case of a vacancy in the office of state's attorney, the governor shall appoint a state's attorney to fill such vacancy, who shall hold his office until the time fixed by the constitution for the election of state's attorneys; and in case of a vacancy in either of the offices of auditor, treasurer or secretary of state, the governor shall fill any such vacancy until the time fixed by the constitution for an election to fill such vacancy.

§ 8. The election of state's attorneys and clerks of the supreme court may be contested in the same manner as is provided for contesting the rights of judges of the circuit courts; and the election of clerks of the circuit courts may be contested in the manner provided for contesting the election of county officers: *Provided*, any person whose election is proposed to be contested shall be released from cost of such contested election by refusing to receive a certificate of the clerk of the county court of his election.

Returns, how made.

§ 9. Returns of the election of judges of the supreme court and circuit courts, secretary of state, auditor, treasurer, state's attorneys and clerks of the supreme court shall be made and canvassed as is now provided by law for representatives in congress. Returns for clerks of the circuit court shall be made and canvassed as is now provided for other county officers.

Qualifications of voters.

§ 10. At any and all elections held in this state, every white male citizen above the age of twenty-one years, having resided in this state one year next preceding any election, and every white male inhabitant of the age aforesaid, who was a resident of this state on the first day of April, in the year of our Lord one thousand eight hundred and forty-eight, shall be entitled to vote at any election; but no person shall be entitled to vote except in the precinct, place, or township where a poll shall be held, in which he shall actually reside at the time of such election: *Provided*, that when any such person shall offer his vote and either of the judges of the election shall suspect that such person is not a qualified voter, or if his vote shall be challenged by any elector, the judge of the election shall tender to such person the following oath or affirmation:

Proviso.

"You do solemnly swear (or affirm, as the case may be,) that you are a resident of this precinct, place, or township, that you are a citizen of this state, and have resided herein one year preceding this election, or that you was an inhabitant of this state on the first day of April, in the year of our Lord one thousand eight hundred and forty-eight, that you are above the age of twenty-one years, and that you have not voted at this election, so help you God."

Every vote offered by any person who shall refuse to take the foregoing oath shall be rejected.

Blank forms to be provided.

§ 11. That the county court, or the board doing county business in each of the several counties in this state, at their first meeting in each and every year, shall cause a suitable number of blank

forms of poll-books and election returns to be made out, (headed and certified as the nature of the case may be,) for each board of elections, in each precinct, township or place; which they shall cause to be delivered into the hands of the sheriffs respectively of said counties, whose duty it shall be to deliver them to the judges, or boards of election, at least ten days previous to the election then to be held.

§ 12. Each qualified voter may vote once and no more; and Restrictions. if any person shall attempt to vote more than once, or to hand in two or more tickets folded together, every person so offending shall be liable to indictment, and on conviction shall be fined in any sum not exceeding fifty dollars.

§ 13. Every ticket handed in shall contain the name of every Form of votes. candidate such voter intends voting for, either in writing or print, designating the office to which he wishes each to be elected; and if more persons are designated for any office than there are candidates to be elected, such part of the ticket shall not be counted for either of them, but no vote shall be rejected for the want of form, if the judges or board of election can determine therefrom, to their satisfaction, the person voted for, and the office which the voter intended such person should fill.

§ 14. That the county court or board doing business, shall pro- Ballot boxes. vide a sufficient number of ballot-boxes at the expense of the county, for the several boards or judges of election, to be kept by one of the judges or board, and to be delivered over to the successors of such judges or board, each of which said ballot-boxes shall How kept. be furnished with a sufficient lock and key, and before any ballot shall have been deposited therein the same shall be publicly opened and exhibited, to the end that the judges and clerks assisting at every election may see that no ballot is in said box; after which, the same shall be locked and the key delivered over to one of the judges or board of election, and shall not be opened during the said election, except in the manner and for the purpose herein provided. An opening shall be made in the top or lid of each of such ballot-boxes, not larger than shall be sufficient to admit of a single closed ballot to be inserted therein at one time, through which each ballot received shall be inserted.

§ 15. The method of voting shall be by ballot, which ballot Method of voting. shall be folded by the voter and delivered to one of the judges or board of election, who shall, without unfolding or opening the same in any manner, deposit the said ballot in said ballot-box: *Provided,* Proviso. that no ballot shall be received or counted unless the same is written or printed upon white paper, without any marks or figures thereon, intended to distinguish one ballot from another.

§ 16. Each clerk of the election shall keep a poll-list, which Duty of clerks and judges. shall contain one column headed "names of voters." The name of each elector voting shall be entered by each clerk in regular succession under the said heading in his poll-list. At each adjournment of the polls, and upon the final closing of the same, the clerks shall, in the presence of the judges or board of election, compare

their respective poll-lists, and correct all mistakes that may be discovered according to the decisions of the judges or board of election, until such poll-lists shall be made to correspond in all respects; the ballot-box shall then be opened and the said poll-lists placed therein; the box shall then again be locked, and the seal of one or more of the judges shall be so placed thereon as entirely to cover the opening in the lid or top of said box; the key of said box shall then be delivered to one of the judges or board of election, and the box to another; the judge having the key shall keep the same in his possession, and deliver it again to the board at the next opening of the poll; the judge having the box shall carefully keep it, without opening it or permitting it to be opened, or the seal thereof to be broken or removed, and shall publicly deliver it in that condition to the board at the next opening of the polls.

Votes how canvassed.

§ 17. As soon as the polls at any election shall have finally closed, the judges, or board and clerks, may adjourn the counting and canvassing of the votes to some convenient hour of the next ensuing day, at which time they shall proceed to canvass the votes polled, by first counting the whole number of ballots in the box; if the ballots shall be found to exceed the number of names entered on each of the poll-lists, they shall be replaced in the box, and one of the judges shall publicly draw out and destroy so many ballots unopened as shall be equal to such excess, and the ballots or poll-lists agreeing, or being made to agree, the board shall proceed to count and estimate and publish the votes.

Fraudulent votes disposed of.

§ 18. As the judges or board of election shall open and read the tickets, each clerk shall carefully mark down the votes each candidate shall receive, in separate columns prepared for that purpose, with the name of such candidate at the head of such column, and the office or place it is designed by the voters such candidate shall fill; but if on such canvassing two tickets shall be found deceitfully folded together, they shall both be rejected as if the same had never been deposited in the ballot-box.

Certificates.

§ 19. As soon as all the votes shall have been read off and counted, the judges or board of election shall make out a certificate, under their hands, stating the number of votes each candidate received, designating the office for which such person received such vote or votes, as is prescribed and directed by the twenty-third section of the thirty-seventh chapter of the Revised Statutes, entitled "elections;" and the said certificate, together with one of the lists of voters, and one of the tally papers, shall be put into the hands of one of the judges or board of election, who shall, within four days thereafter, deliver the same to the clerk of the county court, or his deputy, at the county seat or place of holding county courts; and when received, such clerk or deputy shall proceed to open, canvass and publish the return from each precinct, township or place, as is now provided by law.

Penalty for refusal.

§ 20. If any judges or the judges of any election shall refuse

to receive the vote of any qualified elector who shall take or offer to take the oath prescribed by this act, in such case every judge so refusing or neglecting to receive the vote or ballot, or opening or unfolding such ballot, when the same shall be presented, shall be liable to be indicted, and, on conviction, shall be fined five hundred dollars, and imprisonment not exceeding thirty days; and for every refusal or neglect to receive such vote, the party aggrieved may have an action on the case against the said judge or judges; the damages in such case shall not exceed the sum of five hundred dollars.

§ 21. Section one, six, fifteen, sixteen, eighteen, twenty-four and thirty-nine of chapter thirty-seven, of the Revised Statutes, entitled "elections," approved March third, 1845, shall be and the same is hereby repealed; and such sections of said acts as are not herein repealed, shall remain in full force and effect. Sections repealed.

This act shall take effect and be in force from and after its passage.

Approved February 12, 1849.

An Act to provide for the Filling of Vacancies in certain County Offices.

(77.) SEC. I. *Be it enacted by the People of the State of Illinois,* Vacancies filled.
represented in the General Assembly, That whenever a vacancy shall happen in the office of sheriff, county surveyor or coroner of any county of this State, by death, resignation or removal of any incumbent, it shall be the duty of the clerk of the county court of such county immediately to notify the governor of that fact, and it shall be the duty of the governor to issue a writ of election to fill such vacancy, and direct the time of holding the same; which election shall be proceeded in as in other cases of election.

(78.) SEC. II. This act shall be in force from and after its passage.

Approved Nov. 6, 1849.

An Act to confirm Elections of County Officers.

(79.) SEC. I. *Be it enacted by the People of the State of Illinois,* Elections legalized.
represented in the General Assembly, That all elections heretofore ordered by the governor, to provide for filling vacancies in the office of sheriff and county officers, are hereby confirmed, and the elections of all such officers shall be valid.

(80.) SEC. II. This act to take effect from and after its passage.

Approved Nov. 6, 1849.

An Act to prevent illegal voting at Elections.

In force February 21, 1861.

SECTION 1. *Be it enacted by the People of the State of Illinois,*
represented in the General Assembly, That to constitute residence, What shall constitute residence.
under the election laws of this State, a person shall have resided in the election precinct or district for the term of sixty days; and no person shall be entitled to vote at any election under the laws

of this State, excepting under charters for cities or incorporated towns, unless he shall have actually and in good faith resided in the election precinct or district in which he offers his vote, for sixty days immediately preceding such election; any law of this State to the contrary notwithstanding.

Penalty.

§ 2. Any person violating the provisions of this act shall be subject to all the fines, penalties and punishments that are now provided by law for illegal voting.

§ 3. This act to take effect and be in force from and after its passage.

Approved February 21, 1861.

In force February 22, 1861.

An Act to provide for ascertaining the qualification of Voters and to prevent fraudulent Voting.

WHEREAS the right of suffrage is the highest privilege of the citizen, and should be guarded with proper vigilance against intrusion and fraud; for the purpose, therefore, of ascertaining the persons who may be entitled to vote at the several elections held under the laws of this State, and to prevent illegal voting thereat,

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That to constitute residence,

Residence defined.

under the constitution and election laws of this State, a permanent abode is necessary, and all elections, general or special, held in any town, city, district or ward, every person offering to vote, who is not personally known to the judges and inspectors of election to have such permanent abode and to have resided in such election district for the space of sixty days, immediately preceding such election, shall, if his vote be challenged, take the oath now required by law, and in addition thereto swear or affirm to his place of residence, specifying the particular place and house in which he resides, and stating how long he has there resided, and his business or employment; and if he has not resided in such house for sixty days immediately preceding such election he shall state where and in what house he has resided for the last sixty days; and, in addition thereto, such voter, so challenged, shall be required to produce two witnesses, both of whom are personally known to said judges of said election and resident in the precinct, district or ward, or shall be proved by some legal voter or voters of the precinct or district in which such vote is offered to be voted therein, who shall be known to said judges, and each of whom shall take the following oath, to be administered by one of the judges of said election:

Person challenged to take oath.

What the oath shall be.

Shall produce two witnesses

Form of oath.

"I do solemnly swear, (or affirm as the case may be,) that I am a resident of this election district and entitled to vote at this election, and that I have been a resident of this election district for one year last past, and that I am well acquainted with the voter whose vote is now offered; that he is an actual and *bona fide* resident of this election district, and that he has resided in this State for one year last past."

Duty of judges of election.

§ 2. If any judge of any election shall permit any voter to vote, whose vote is so challenged, without the proof required in the

first section of this act, or shall knowingly and willfully permit any person to testify as a witness, contrary to the provisions of this act, he shall be deemed guilty of high misdemeanor, and, on conviction thereof, shall be fined in the sum of one thousand dollars and imprisoned in the county jail for six months.

§ 3. If any witness or voter, whose vote is so challenged, and sworn under the provisions of this act, shall, knowingly, willfully and corruptly swear falsely, he shall be deemed guilty of perjury, and, on conviction thereof, imprisoned in the penitentiary for any time not less than three nor more than twenty-one years. Punishment for perjury.

§ 4. If any person shall vote more than once at any election held under the authority of the laws of this State, or shall vote at any such election, who is not a qualified voter at the place where he so votes, or shall offer to vote, after having once voted at such election, he shall, on conviction thereof, be confined in the penitentiary for any term not less than one or more than five years. Illegal voting. Punishment for.

§ 5. At all elections, general or special, in this State, where the vote is by ballot, if the judges of elections are satisfied, under the provisions of this act and the other laws of this State relating to elections, that the person offering the vote is a legal voter he shall indorse on the back of the ticket offered the number corresponding with the number of the voter on the poll book, and put said ticket immediately in the ballot box, and the clerks of the election shall enter the name of the voter and his number in the poll book. Indorsement of voter's name on back of ballot.

§ 6. At the close of the polls the poll books shall be signed by the judges and attested by the clerks; the names therein contained shall then be counted, and the number set down at the foot of the poll books. Closing of the poll books, to be signed.

§ 7. All the ballots counted by the judges of election shall, after being read, be strung upon a strong thread or twine, in the order in which they have been read, and shall then be carefully enveloped and sealed up by the judges, who shall direct the same to the officer or officers to whom by law they are required to return the poll books, and shall be delivered, together with said poll books, to said officer or officers, who shall carefully preserve said ballots for six months, and at the expiration of that time shall destroy them. And in all cases of contested election the parties contesting the same shall have the right to have the said package of ballots opened, and said ballots referred to by witnesses for the purpose of such contest. But said ballots shall only be so examined and referred to in the presence of the officer having the custody thereof. Preservation of ballots. After six months, may be destroyed. In case of contested elections.

§ 8. The provisions of this act shall apply to all general and special elections, hereafter held in this state, whether for general, town, municipal or other officers; and no person shall be considered, under any circumstances, as having a residence in any ward or election district or precinct, unless he shall have had a permanent abode therein for at least thirty days immediately preceding such election. Act to apply to general and special elections

§ 9. No liquor or other intoxicating drinks shall be sold or

Sale of liquors on election day prohibited.

Punishment.

given away, at retail, nor shall any bar-room or place where liquor or intoxicating drinks are sold at retail be open upon such election day; and it shall be the duty of the sheriff, constables, public officers and magistrates to see that the provisions of this section are enforced; and any violation of its provisions shall be prosecuted and punished in the same manner and to the same extent as the keeping of tippling houses open upon Sunday or the first day of the week is now punished by law.

§ 6. This act shall take effect and in force from and after its passage.

Approved February 22, 1861.

DIVISION III.

INCLOSURES AND FENCES.¹

[From Chapter 51 of the Revised Statutes.]

SECTION 1. Those who are or shall be proprietors or owners of land, in any field that is now occupied, used and declared, or that shall hereafter be occupied, used or declared to be a common field, may meet together, by themselves or agents, annually, on the first Monday in March, or such other days as they shall appoint, at some convenient place by them appointed, for the purpose of making such rules and regulations as to them shall seem meet for the well ordering of the affairs of such field, with respect to fencing and cultivation, and all other things necessary for the well managing the same, for the common interest of such proprietors; in which meeting the proprietors of such field, shall have full power by their major vote, to be computed by interest, to order all such affairs and make such regulations as they shall deem proper and expedient for the purpose aforesaid: *provided, always*, that any person who is a proprietor in any common field, may, at any time hereafter, separate his, her or their land, from such common field, by fencing the same, subject only to making and keeping in repair fences in like manner as persons having inclosures adjoining to the common fields, as by this law directed.

Common fields, owners of, may make rules and regulations concerning.

SEC. 2. The better to enable them to carry on and manage the affairs of such field, they are hereby authorized and empowered to elect a chairman, clerk and treasurer, who shall be sworn to the faithful discharge of their duties, respectively; and the clerk shall enter and record all the acts, votes and resolutions of the said proprietors, relating to the management of the said common fields; and shall continue in his office until another shall be chosen and qualified to serve in his room; and that the election of chairman, clerk and treasurer, shall be annually or otherwise, as shall be determined by the said proprietors or a majority of them, in their lawful meetings assembled.

May elect officers.

Their duties.

SEC. 3. For the better management of their common fields, they shall choose a committee of three persons, which shall be styled "the field committee," who shall be sworn to a faithful discharge of their duties; the said committee may call a meeting of the proprietors of such field when they shall judge it needful, by giving warning to such of them as live in the town or village, ver-

Shall also choose committee of three.

Their duties,

(1) The law relative to inclosures and fences has been materially amended, and it is thought much improved by the act approved February 18th, 1857, which is included in this compilation, and by which as much of this chapter as is inconsistent with the provisions of said act, is repealed. Sections 11, 12, and 13, would seem to be that portion of this chapter affected by the provisions of the amendatory act.

bally, where such fields lie, and to the agents, if any, of non-resident proprietors, ten days previous to the time of such meeting, or by warning such proprietors in such other manner as they shall, in their lawful meetings, agree upon.

Proprietors may levy taxes on themselves to defray expenses.

SEC. 4. The proprietors of common fields are hereby authorized and empowered, at their lawful meetings, to grant and levy taxes on themselves, when they shall judge it needful, according to their several interests in such fields, for defraying the charges that may arise in setting out and designating the proportion of, or altering the fence of such fields, in making gates and bridges, or for any other public or common charge, relating to such fields; and to appoint assessors and collectors for the making, apportioning and collecting such taxes; which collectors shall have the same power and authority, in every respect, as the collectors of county taxes; which taxes, when collected, shall be paid into the hands of the treasurer, and shall be appropriated by a majority of the proprietors for the common benefit.

Committee to point out proportion of fence each shall erect.

SEC. 5. The field committee shall point out and designate the place where, and the proportion which each proprietor shall erect of such common fence, and every proprietor in such common field shall duly erect and maintain his, her or their proportion in such common fence, according to the directions of such committee: *provided*, such committee shall attend all orders and comply with all regulations of the major part of the proprietors of such common field, for the improvement thereof for the common benefit, under the penalties of such fines and forfeitures as shall be lawfully annexed to the breach or neglect of such orders or regulations.

Proprietors to have liberty to pass over each other's land to make fence.

SEC. 6. Any person or persons having his, her or their part or proportion of common fence designated by the said field committee, shall have liberty, in order to make or repair the same, of passing over any person's lot or land whatsoever, whenever it shall be necessary for the purpose aforesaid; and when it shall so happen that the line of fence ordered as aforesaid, for the inclosing or securing any common field, shall run in upon or intersect the fence of any person making a particular inclosure adjoining the common field, the one-half of the division fence between such particular inclosure and the common field as aforesaid, shall be made and maintained by the proprietors of such common field, and the other half by the owner of such particular inclosure; and if any person or persons, whose land shall adjoin any such common field, shall neglect to keep in repair, and maintain his, her or their part of such fence, after being requested thereto by the field committee, in writing under their hands for the space of ten days, it shall be lawful for the said committee to repair the said fence at the proper charges of the delinquent; which expense, after being estimated by two reputable freeholders of the town or village wherein such fields are situated, may be recovered by action of debt, before any court having competent jurisdiction, together with costs.

Duty of each to repair his proportion of fence.

Notice to be given of removal of fences.

SEC. 7. If any person or persons, whose lands shall adjoin such common field, shall lay open the same, without giving two

months' notice thereof in writing, lodged with the clerk of such common field, such person or persons shall be liable to pay all damages that may accrue to the proprietors, or to any of them, of such common fields, to be recovered in any action of damages, before any court having competent jurisdiction.

SEC. 8. All accounts for any services rendered any person acting under the appointment of, or by the direction of the major part of the proprietors of common fields, shall be paid out of the common treasury of such proprietors, after being audited by the field committee, except the accounts of such field committee, which last mentioned accounts shall be audited by a special committee; and all orders on the treasurer shall be signed by the chairman, and attested by the clerk; and the collectors shall, for all or any moneys by them paid to the treasurer, demand duplicate receipts, one of which shall be held by the said collectors, and the other lodged with the clerk; the treasurer shall also demand duplicate receipts for all moneys paid by him, on orders on the treasury, one of which receipts shall be holden by the treasurer, and the other lodged with the clerk.

Accounts for services how audited and paid.

SEC. 9. The proprietors of common fields shall have power, by their major votes, in lawful meetings assembled, to order all such fines and forfeitures, on either, or any of themselves, as to them shall seem reasonable, for carrying into effect any of their rules and regulations, for the common benefit of the said proprietors: *provided, nevertheless*, that the penalty does not exceed the sum of five dollars, and that the person or persons thinking himself or themselves to be unreasonably or oppressively fined, shall have the right to appeal from the judgment of said proprietors to the next circuit court holden for said county: *provided*, that notice of such appeal shall be given within ten days after the judgment of such appeal shall be given by the said proprietors.

Power to order fines.

Proviso not to exceed five dollars.

Appeal allowed from fines.

SEC. 10. The said common field shall be inclosed with a good and sufficient fence, according to law, on or before the first day of May in each and every year, or such other day as the said proprietors may appoint; and no cattle, horses or other animals, shall be suffered to be put into such fields, for the purpose of depasturing therein, between the first day of May and the fifteenth day of November, in each and every year, or on such other day and time as the proprietors may agree upon, under the penalty of paying such fines as shall be ordered by the said proprietors, in lawful meeting assembled.

Field to be inclosed by good fence.

Rule concerning cattle and other animals.

SEC. 11. For the better ascertaining and regulating of partition fences, it is hereby directed, that when any neighbors shall improve lands adjacent to each other, or when any person shall inclose any land adjoining to another's land already fenced, so that any part of the first person's fence becomes the partition fence between them, in both these cases the charge of such division fence, (so far as inclosed on both sides,) shall be equally borne and maintained by both parties; to which, and other ends in this chapter mentioned, the county commissioners, yearly, and every year in the

Partition fences how regulated and charge borne.

Fence viewers to view fences.

term next after the month of January, shall nominate, and are hereby required to nominate and appoint three honest, able men, for each township, who being duly sworn to the faithful discharge of the duties of their appointment, shall proceed, at the request of any person or persons feeling him or themselves aggrieved, to view all such fence and fences, about which any difference may happen or arise; and the aforesaid persons, or any two of them, in each township respectively, shall be the sole judges of the charge to be borne by the delinquent, or by both or either party, and of the sufficiency of all fences, whether partition fences or others.¹

Fence viewers to give notice of insufficiency of fence.

SEC. 12. When they shall judge any fence to be insufficient, they shall give notice thereof to the owners or possessors, and if any one of the owners or possessors, upon the request of the other, and due notice given by the said viewers, shall refuse or neglect to make or repair the said fence or fences, or to pay the moiety of the charges of any fence before made, being the division or common fence, within twenty days after notice given, then, upon proof thereof before two justices of the peace of the respective county, it shall be lawful for the said justices to order the person aggrieved and suffering thereby, to make or repair the said fence or fences, who shall be reimbursed his costs and charges from the person so refusing or neglecting to make or repair the partition fence or fences aforesaid, or to order the delinquent to pay the moiety of the charge of the fence before made, being a division or common fence, as the case may be.

Order to make or repair.

Order to make or repair, how enforced.

SEC. 13. If the delinquent shall neglect or refuse to pay the party injured the moiety of the charge of any fence before made, or to reimburse the costs and charges of making or repairing the said fence or fences, under the order aforesaid, then the same shall be levied upon the delinquent's goods and chattels, under warrant from a justice of the peace, by distress and sale thereof, the overplus, if any, to be returned to the said delinquent.

Owner may enclose land with walls or otherwise.

Height of walls or hedges.

Proviso.

SEC. 14. But nothing herein contained shall be intended to prevent or debar any person or persons from inclosing his or their grounds, in any manner they please, with sufficient walls or fences of timber, other than those heretofore mentioned, or by dikes, hedges and ditches, all such walls and fences to be in height at least five feet from the ground; and all dikes to be at least three feet in height from the bottom of the ditch, and planted and set with thorn and other quickset, so that such inclosures shall fully answer and secure the several purposes meant to be answered and secured by this law: *provided*, that such walls or fences of timber, other than those heretofore mentioned, and dikes, hedges and ditches, shall be subject to all provisions, inspections and restrictions, to which by this chapter, any other inclosure or fence is made liable, according to the true intent and meaning hereof.

Damages where animals break through a sufficient fence.

SEC. 15. If any horse, mare, gelding, colt, mule or ass, sheep, lamb, goat, kid, bull, cow, heifer, steer or calf, or any hog, shoat

(1) Fence viewers are now elected by the people. See *ante*, p. 24, sec. 4.

or pig, shall break into any person's inclosure, the fence being good and sufficient, the owner of such animal or animals, shall be liable in an action of trespass, to make good all damages to the owner or occupier of the inclosure, for the first offence single damages only, and ever afterwards double the damages sustained.

SEC. 16. The condition of the fence at the time the trespass was committed, may be proven upon trial, and on complaint made by the party injured before any justice of the peace of the county wherein such trespass shall be made, such justice is hereby authorized and required to issue a summons without delay, to three respectable householders of the neighborhood, noways related to either of the parties, nor interested concerning the trespass, reciting the complaint and requiring them to view the fence where the trespass is complained of, and their testimony in such case, shall be good evidence touching the sufficiency of the fence.

Condition of fence may be proven on trial; manner of proceeding.

SEC. 17. If any person injured for want of such sufficient fence, shall hurt, wound, kill, lame or destroy, or shall cause to be hurt, wounded, killed, lamed or destroyed, by shooting, hunting with dogs or otherwise, any of the aforesaid animals, he or she so offending, shall satisfy or pay the owner of the same, the damages with costs, recoverable as aforesaid: *provided*, that if the party liable to damages as aforesaid, in either case, will abide and pay what may be deemed reasonable by three neighbors, indifferently chosen to assess the same, it shall be a bar against such suit.

Damages where animals are willfully wounded or killed.

SEC. 18. All animals trespassing, the owners of the same (if known) shall be notified thereof, and if they shall refuse to secure the said animals and prevent their trespassing, the persons on whom the trespass was committed, shall be authorized to secure the same, supplying the aforesaid animals with provender and water, for which they shall receive a compensation from said owner: *provided*, That if said animals shall receive any abuse or damage from said persons, they shall be barred from any compensation for the aforesaid services.

Animals trespassing may be secured.

Proviso.

SEC. 19. When any person or persons may, by mistake, erect and make a fence or inclosure on the land of another person, then, and in that case, when the line or lines are legally run by the proper authority, and the fence and inclosures are known to be on the land of such other person, the person or persons making such fence or fences as aforesaid, through mistake, shall be empowered and authorized by this chapter to enter into the said land of another, doing as little damage as possible, and take away the rails, posts, wood and stones of which said fence or fences are made and erected, within one year from the time said line or lines may be legally run.

Fences erected by mistake on land of another, may be removed.

SEC. 20. The owner or owners of any land whereon a fence or fences may have been made by mistake, shall not throw down, nor in any manner disturb the said fence or fences for one year from the time such mistake is found out.

Fence not to be moved for one year.

SEC. 21. When either the owner of the rails, or the owner of the land is desirous of having the line or lines run, dividing such

Notice to parties of intention to survey lines.

land, then, in that case, the person wishing such survey, shall give the other person notice in writing, ten days before such survey is made, of the time and place of making such survey.

Approved March 3, 1845.

An Act to amend chapter fifty-one of the Revised Statutes, entitled "Inclosures and Fences."

In force April 20
1857.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That where two or more persons shall have lands adjoining, each of them shall make and maintain a just proportion of the division fence between them, except the owner or owners of either of the adjoining lands shall choose to let such land lie open.¹

Line fences, how
maintained.

When land lies
open and after-
wards inclosed.

§ 2. When any person shall have chosen to let his land lie open, if he shall afterward inclose the same, or if any owner of land adjoining upon the inclosure of another, he shall inclose the same upon the inclosure of another, he shall refund to the owner of the adjoining lands a just proportion of the value at that time of any division fence that shall have been made by such adjoining owner, or he shall immediately build his proportion of such division fence.

Value of fence,
how determined.

§ 3. The value of such fence and the proportion thereof to be paid by such person, and the proportion of the division fence to be made and maintained by him, in case of his enclosing his land, shall be determined by any two fence viewers of the town, in counties where township organization shall have been adopted, and in other counties by any two fence viewers of the county.²

Disputes how set-
tled.

§ 4. If disputes arise between the owners of adjoining lands concerning the proportion of fence to be made or maintained by

(1) It is held that any person occupying land, and interested in the making and maintaining a division fence, be his estate or interest in the premises what it may, is entitled to avail himself of the provisions of the statute in reference to division fences; the remedy is not limited to the owner of the fee.—*Bronk v. Becker*, 17 Wend., 320.

(2) Adjoining owners should always endeavor, if possible, to mutually agree as to the proportion that each shall maintain of the division fence between their adjoining lands; the agreement should be reduced to writing; each party taking a copy. The following is suggested as a convenient form for such agreement:

Form of Agreement to divide and maintain a division fence between adjoining owners.

This agreement made this — day of —, A. D. one thousand eight hundred and —, between A. B., of the town of *Waukegan*, in the county of *Lake*, and the state of Illinois, of the one part, and C. D., of the same town, of the other part, witnesseth, that whereas the said A. B. has heretofore erected a fence on the division line between his lands and the lands of the said C. D., which said fence commences at (*describe the location of the fence.*) And whereas, after the erection of said fence the said C. D. inclosed a field on the east side of said division line, so that *sixty* rods of said fence, commencing at the, &c., (*describe the location of said portion of fence.*) has become and now is a partition fence between the fields of the said A. B. and C. D.; and whereas, the said C. D. has paid to the said A. B. — dollars, being in full for one-half of the value of said *sixty* rods of fence, it is therefore agreed between the parties hereto that the *thirty* rods of fence on the

either of them, such disputes shall be settled by any two of the fence viewers of the town, in counties where township organization shall have been adopted, and in other counties by any two fence viewers of the county; and in such cases it shall be the duty of the two fence viewers to distinctly mark and define the proportion of the fence to be made or maintained by each.

§ 5. When any of the above mentioned matters shall be submitted to fence viewers, each party shall choose one, and if either neglect after eight days' notice to make such choice, the other party may select both.¹ Viewers, how chosen to settle disputes.

north part of said *sixty* rods shall be well and sufficiently maintained and kept in repair by the said A. B., and the remainder of said *sixty* rods shall be kept in like repair by the said C. D.

In witness whereof, the said parties have hereunto set their hands and seals the day and year first above written.

A. B., [SEAL.]
C. D., [SEAL.]

Where a dispute arises as to the proportion of a fence to be maintained by each party, it may be settled by fence viewers, even where there has been an agreement on the subject.—*Burger v Kortwright, 4 Johns., 414.*

The decision of the fence viewers as to the proportion of fence of each party, is not necessary where there is no dispute between them.—*Willoughby v. Carlton, 9 Johns., 136.*

¹*Form of Notice to adjoining owners, to choose fence viewer to settle dispute.*
To Richard Roe,

Sir:—A dispute having arisen between you and myself, being the adjoining owners of lands in the town of *Earl*, in the county of *La Salle*, and state of Illinois, concerning the proportion of division fence to be made, (or maintained) by each of us upon the line of our said lands, your land in question being known as (*describe the land with reasonable certainty*), and mine as (*describe the land*.) I have chosen *James White*, one of the fence viewers of said town, and do hereby give notice to you to proceed and choose another of the fence viewers of said town, to the end that said dispute between us may be settled and decided by the said fence viewers according to law and as shall seem to them just and right, and that if you shall neglect to make such choice for eight days after receiving this notice, I shall make such choice myself, and proceed to have said matter in dispute adjusted by the fence viewers thus chosen by me, the same as if one of them had been chosen by you.

Yours, &c.,

JAMES E. GAMMON.

Dated, &c.

Form of Submission of dispute between adjoining owners to two fence viewers.
To Peter Telton and James Grady, two of the fence viewers of the town of *Scott*, in the county of *Ogle* and state of Illinois.

A dispute having arisen between the undersigned, *A. Wilber* and *B. L. Beach*, adjoining owners of lands in said town of *Scott*, concerning the proportion of division fence to be made (or maintained) by each, on the line of their respective lands, the land of the said *A. Wilber* being described as follows: (*describe the land with reasonable certainty*), and that of the said *B. L. Beach*, being described as follows: (*describe the land*)—the said *A. Wilber* has therefore chosen you the said *Peter Telton*, and the said *B. L. Beach* has chosen you the said *James Grady*, as two fence viewers of said town of *Scott*, to the end that you may proceed to settle and decide said matter of dispute: and the undersigned do hereby submit said matter of dispute to you the said fence viewers, and request that you will proceed

Examine premises.
Decision to be final.

§ 6. The two fence viewers so chosen shall examine the premises and hear the allegations of the parties. In case of their disagreement they shall select another fence viewer to act with them, and the decision of any two of them shall be final upon the parties to such dispute, and upon all parties holding under them.

Decision reduced to writing and filed.

§ 7. The decision of the fence viewers shall be reduced to writing; shall contain a description of the fence and of the proportion to be maintained by each, and their decision upon any other point in dispute between the parties, submitted to them as aforesaid; and shall be forthwith filed in the office of the town clerk, or in the office of the circuit court in counties which shall have not adopted township organization.¹

according to law, and settle and decide the same as shall seem to you just and right.

Dated this — day of —, 18—.

A. WILBER,
B. L. BEACH.

¹*Form of Decision of fence viewers in relation to dispute between adjoining owners.*

Adams County, } ss.
Town of Liberty, }

Whereas, we, the undersigned, two of the fence viewers of said town of Liberty having been chosen by Robert Voeth and John Jackson, adjoining owners of lands in said town, for the purpose of settling and deciding a dispute which has arisen between them concerning the proportion of division fence to be made (or maintained) by each of them, on the line between their said lands, the land of the said Robert Voeth being described as follows: (*describe the land or field in question*) and the land of the said John Jackson being described as follows: (*describe the land or field*), and the said Robert Voeth and John Jackson having on the — day of —, 18—, submitted the said matter in dispute to us, for our settlement and decision, we did, on the — day of —, 18—, proceed and examine the premises, and hear the allegations of the parties. The said fence we find to be a rail fence, commonly called a Virginia or worm fence, running north and south, in length, one hundred and sixty rods, and being the division fence between the lands above described, that the same was originally erected jointly by the parties and divided equally between them, the said John Jackson taking the south half thereof for his portion by agreement, and that the said John Jackson now neglects and refuses to keep his portion of the same in proper repair. We do, therefore, adjudge and determine that, (*conclude with the determination of the fence viewers according to the fact.*)

Given under our hands this — day of —, A. D. 18—.

L. P. GROVER,
JOSEPH RHOADES.

Form of Decision of fence viewers, where two can not agree, and another is selected.

Stephenson County, } ss.
Town of Wadoms, }

A dispute having arisen between A B and C D, two adjoining owners of lands in said town of Wadoms, concerning the proportion of division fence to be made (or maintained) by each of them on the line of their said lands, the land of the said A B being described as follows: (*describe the land or field in question*), and the lands of said C D, being described as follows: (*describe the land or field*), the said parties did on the — day of —, 18—, submit the said matter in dispute to the undersigned, William Shippy and Nelson Wait, two of the fence viewers of said town of Wadoms, for their settlement and decision, the said parties having chosen said fence viewers for

§ 8. If any person who is liable to contribute to the erection or reparation of a division fence, shall neglect or refuse, for the period of four weeks after notice in writing so to do, to make and maintain his proportion of such fence, the party injured may make or repair the same at the expense of the party so neglecting or refusing, to be recovered from him with costs of suit;¹ and the party so neglecting or refusing, after notice in writing, shall be liable to the party injured for all damages which shall thereby accrue, to be determined by any two fence viewers selected as above provided, and the fence viewers shall reduce their appraisal of damages to writing, and sign the same.²

Persons refusing to make fence, other party to make.

Expense of, how recovered.

that purpose, the said fence viewers did, therefore, on the — day of —, 18—, proceed and examine the premises and hear the allegations of the parties, (*here set forth a description of the fence as contained in the foregoing form, as near as the case will admit,*) and the said two fence viewers, being unable to agree in the premises, did select *Norman Phillips*, another fence viewer of said town, to act with them in making such settlement and decision; and we, the undersigned, being now fully advised in the premises, do adjudge and determine that (*conclude according to the determination of the viewers.*)

Given under our hands this — day of —, 18—.

WILLIAM SHIPPY,
NELSON WAIT,
NORMAN PHILLIPS.

¹ *Form of Notice to adjoining owner to contribute to erection or reparation of division fence.*

To *Richard Sampson* :

SIR:—You are hereby notified to repair that portion of the division fence on the line between your land and mine, situate in the town of *Barry*, and county of *Pike*, according to the decision of *Josiah Lippencott* and *John Head*, two of the fence viewers of said town, made on the — day of —, 18—, and filed in the office of the town clerk of said town, on the — day of —, 18—, and that if you shall neglect to repair the same, agreeably to said decision, for the period of four weeks from the date of receiving this notice, I shall proceed myself and repair said fence at your expense.

Dated this — day of —, A. D. 18—.

Yours, &c.,

L. N. FERRIS.

² *Form of Appraisal of damages by fence viewers, accruing to adjoining owner, by reason of neglect to make or repair fences.*

Whiteside County, }
Town of Portland, } ss.

Whereas we, the undersigned, two of the fence viewers of the said town of *Portland*, having been chosen by *P. B. Besse* and *John Smith*, adjoining owners of lands in said town, for the purpose of appraising the damages claimed by the said *P. B. Besse*, and accruing to him in consequence of the neglect of the said *John Smith*, to repair his proportion of a division fence mentioned and described in a certain decision made by (*state by whom made*, or if the fence has been divided by agreement, state that fact and vary the call accordingly,) on the — day of —, 18—, and reduced to writing and filed in the office of the town clerk of said town of *Portland*. We did, on the — day of —, 18—, proceed to examine the premises; and after due inquiry and examination by us made, and having heard the allegations of the parties, we do determine that the said *P. B. Besse* has sustained damages to his land, crops, fruit trees, and shrubbery (*or as the case may be*.) in consequence of the neglect of the said *John Smith* to repair his proportion of the

Partition fence,
how removed.

§ 9. If any person who shall have made his proportion of a division fence shall be disposed to remove his fence and suffer his lands to lie open, after having first given the adjoining owner at least sixty days' previous notice in writing of his intention so to do, he may at any time between the first day of December, in any year, and the first day of April following but at no other time, remove the same.¹

Damages in case
of removal with-
out notice.

§ 10. If any such fence shall be removed without such notice, the party removing the same shall pay to the party injured all such damages as he may thereby sustain, to be recovered with cost of suit.²

Division fence de-
stroyed, how re-
paired.

§ 11. Whenever a division fence shall be injured or destroyed by fire, floods or other casualty, the person bound to make and repair such fence, or any part thereof, shall make or repair the same, or his just proportion thereof, within ten days after he shall be thereto required by any person interested therein, such requisition to be in writing, and signed by the party making the same.³

division fence, as aforesaid; which damages we have ascertained, and do appraise at ——— dollars.

Witness our hands, this — day of —, A. D. 18—.

P. S. LOGAN,
R. BROWN.

The question arises as to the nature and extent of damages which will come under the jurisdiction of fence viewers to appraise. It was held by the Supreme Court of New York, under a like provision of law, that fence viewers are authorized only to appraise damages sustained by the neglect or refusal of a party to make or maintain his proportion of a division fence, for ordinary injuries resulting from defective fences, such as the treading down and destruction of grass, corn, wheat, and other crops, the extent of which can be ascertained upon view or by inspection; and that they have not the right to appraise damages where the injury sustained is the death of cattle caused by eating unripe corn, in the fields of a party who has neglected to keep his proportion of a division fence in repair.—*Clark v. Brown*, 13 *Wend.*, 213.

The court for the correction of errors, affirmed the judgment of the supreme court, but the members being equally divided in opinion, the judgment of affirmance has not been considered as setting the case.—*Id.*

¹ *Form of Notice by adjoining owner, of his intention to remove his share of division fence.*

To Herman Basset:

Sir:—You will take notice that I desire to remove my portion of the division fence on the line of our adjoining lands, (*describe the location of the fence with reasonable certainty*), that my said lands may hereafter lie open, and that I shall remove the same after the expiration of sixty days from the date of your receiving this notice.

Dated this — day of —, A. D. 18—.

Yours, &c.,
JOSEPH GOLDER.

(2) Where a party removes a division fence, without having previously given the required notice, the party injured thereby is not limited to a suit for the recovery of actual damages sustained in consequence of such removal, but may make the fence anew, and recover the expense thereof by action.

If actual damages are sustained, as the loss of a crop for instance, caused by the removal of the fence, an action for the recovery of such damages, as well as a suit to recover the expense of making the fence, may be sustained.—*Richardson v. McDougall*, 11 *Wend.*, 46.

³ *Form of Notice to person to make or repair fence injured by fire, flood, or other casualty.*

To A. B.,

Sir:—I do hereby request you to repair that portion of the division fence

§ 12. If such person shall neglect or refuse to make or repair his proportion of such fence for the period of ten days after such request, the party injured may make or repair the same at the expense of the party so refusing or neglecting, to be recovered with costs of suit. In case of neglect to do so.

§ 13. Fence viewers may examine witnesses on any and all questions submitted to them, and either of such fence viewers shall have power to issue subpoenas for and administer oaths to such witnesses. Viewers examine witnesses.

§ 14. In all counties which shall not have adopted township organization, justices of the peace shall be *ex-officio* fence viewers of the county. In what counties justices to be viewers.

§ 15. Fence viewers shall be entitled to one dollar and fifty cents per day each for the time necessarily spent, as above provided, to be paid in the first instance by the party requiring the services, and all expenses of the view shall be borne equally between the parties, except in case of view to appraise damages for neglect or refusal to make or maintain a just proportion of a division fence, in which case the costs of view shall be paid by the party in default, and may be recovered as a part of the damages assessed. Viewers, how paid.

§ 16. Damages accruing to any person or persons under the provisions of this act may be recovered in an action of *assumpsit*, and justices of the peace shall have jurisdiction in all cases where the damages claimed shall not exceed one hundred dollars. Damages, how recovered.

§ 17. So much of said chapter fifty-one of the revised statutes as is inconsistent with the provisions of this act is hereby repealed. Repeal of prior law.

Approved Feb. 18, 1857.

on the line between our adjoining lands in the town of *Rush*, and county of *Jo Daviess*, which you are bound to repair, (*describe the fence in question.*) Should you neglect to repair said fence for the period of ten days from this date, I shall proceed myself to repair the same at your expense.

Dated this — day of —, 18—.

Yours, &c.,

G. N. TOWNSEND.

DIVISION IV.

PAUPERS.

[From Chapter 80 of the Revised Statutes.]

Who considered
paupers; what
relatives to sup-
port each other.

Penalty for neg-
lect.

Proviso.

Order in which
relatives shall be
liable.

Proviso.

When pauper has
no relatives, how
relieved.

If non-resident
pauper be sick or
die, expenses how
paid.

SECTION 1. Every poor person who shall be unable to earn a livelihood in consequence of any bodily infirmity, idiocy, lunacy, or other unavoidable cause, shall be supported by the father, grandfather, mother, grand-mother, children, grand-children, brothers or sisters of such poor person, if they or either of them be of sufficient ability. And every person who shall fail or refuse to support his or her father, grand-father, mother, grand-mother, child or grand-child, sister or brother, when directed by the county commissioners' court of the county where such poor person shall be found, whether such relative reside in the same county or not, shall forfeit and pay to the said county commissioners, for the use of the poor of their county, the sum of five dollars for every month for which they or either of them shall fail or refuse, to be recovered in the name of the county commissioners' court, for the use of the poor as aforesaid, before any justice of the peace, or any other court having jurisdiction: *provided*, that when any persons become paupers from intemperance or other bad conduct, they shall not be entitled to support from any relation, except parent or child.

SEC. 2. The children shall first be called on to support their parents, if there be children of sufficient ability, and if there be none of sufficient ability, the parents of such poor person shall be next called on, and if there be no parents or children, the brothers and sisters of such poor person shall next be called on, and if there be no brothers or sisters, the grand-children of such poor person shall next be called on, and then the grand-parents: *provided*, married females, whilst their husbands live, shall not be liable to a suit.

SEC. 3. When any such poor person shall not have any such relatives in any county in this state, as are named in the preceding sections, or such relative shall not be of sufficient ability, or shall fail or refuse to maintain such pauper, then the said pauper shall receive such relief as his or her case may require, out of the county treasury, in the manner hereinafter provided.

SEC. 4. When any non-resident, or any other person not coming within the definition of a pauper, shall fall sick or die in any county of this state, not having money or property to pay his board, nursing and medical aid, it shall be the duty of the overseers of the poor of the proper district, or if there be none, then of the nearest county commissioner of the county, upon complaint being made, to give or order to be given such assistance to such poor

person as they may deem just and necessary; and if said sick person shall die, then the said overseers or county commissioner shall give or order to be given to such person, a decent burial: and the said overseers or county commissioners shall make such allowance for board, nursing, medical aid or burial expenses as they shall deem just and equitable; which allowance shall be laid before the county commissioners' court, and the said court shall allow either the whole, or such reasonable and just part thereof as ought to be allowed, and order the same to be paid out of the county treasury.

SEC. 5. The justices of the peace in each justice's district, in conjunction with such other person as the county commissioners in the several counties in this state, may appoint, shall be, and are hereby made, overseers of the poor, and are vested with the entire and exclusive superintendence of the poor in their respective districts, excepting in case of corporate towns or cities, to which such superintendence and jurisdiction shall be by law granted.¹

SEC. 6. It shall be the duty of the said justices within their respective districts, and the person appointed as aforesaid, diligently to inquire after all such persons as are unable to earn a livelihood, in consequence of any bodily infirmity, idiocy, lunacy, or other unavoidable cause, and to provide for them the necessary comforts of life, by confiding the care of such poor person or persons to some moral and discreet householder or householders in the district, of sufficient ability to provide for them. Every person to whom the care of such poor person shall be committed, shall execute a bond to the county in which said poor person shall reside, conditioned that he will treat said poor person with humanity, and afford to him or her the necessary attention and comforts of life, fitted to his or her condition. Said bond shall set forth the sum to be given by said county for keeping such poor person or persons.

SEC. 7. Said overseers shall, at each session of the county commissioners' court, make a full report of their actings and doings under this chapter, and return a list of all the poor within their respective districts, specifying the age, sex and infirmities of each.

SEC. 8. Upon the making of said report, it shall be the duty of the several county commissioners' courts, to make such appropriations as will justify the person having the custody of any poor person, in affording to him or her suitable clothing, and such comforts as may be suitable to their state and condition.

SEC. 9. Any sum set forth in the bond executed by any county as aforesaid, may be lessened or increased at the discretion of said county, without affecting, in either case, the validity of the bond.

SEC. 10. The county commissioners' court may, at any regular term of said court, remove any poor person from the custody of the person or persons to whose care the overseers may have committed the keeping of such poor person, without subjecting the overseers or the county to any claim for damages.

(1) In counties having township organization, overseers of the poor are elected by the people in each town, see *ante* p. 23

Labor of pauper. SEC. 11. The overseers, in fixing the amount to be paid for keeping any poor person, shall take into the calculation the ability of the poor person to labor.

Residence of pauper, how ascertained. SEC. 12. Any person becoming chargeable as a pauper in this state, shall be chargeable as such pauper in the county in which he or she resided at the commencement of the thirty days immediately preceding such person becoming so chargeable.

Non-resident pauper may be removed to proper county. SEC. 13. If any person shall become chargeable in any county in which he or she did not reside at the commencement of the thirty days immediately preceding his or her becoming so chargeable, he or she shall be duly taken care of by the proper authority of the county where he or she may be found; and it shall be the duty of the clerk of the county commissioners' court, to send notice by mail, to the clerk of the county commissioners' court of the county in which such pauper resided, as before stated, that said person has become chargeable as a pauper, and requesting the authorities of said county to remove the said pauper forthwith, and to pay the expense accrued in taking care of him or them.

Liability of such proper county. SEC. 14. If said pauper, by reason of sickness or disease, or by neglect of the authorities of the county to which he or she belongs, or for any other sufficient cause, can not be moved, then the county taking charge of such individual or individuals may sue for and recover from the county to which said individual or individuals belong, the amount expended for and in behalf of such pauper or paupers, and in taking care of the same.

Term residence defined. SEC. 15. The term "residence" mentioned in this chapter, shall be taken and considered to mean the actual residence of the party, or the place where he or she was employed, or in case he or she was in no employment, then it shall be considered and held to be the place where he made it his or her home.

Penalty to convey pauper into county he is not resident of. SEC. 16. If any person shall bring and leave any pauper or paupers in any county in this state, wherein such pauper is not lawfully settled, knowing him or them to be paupers, he shall forfeit and pay the sum of one hundred dollars for every such offence, to be sued for and recovered by and to the use of such county, by action of debt, before any justice of the peace in the proper county.

Poor-houses to be established. SEC. 17. The county commissioners' court in each county, is hereby authorized (whenever it shall see fit so to do) to establish a poor-house.

Land may be acquired for. SEC. 18. The county commissioners are hereby authorized to take to the county, by grant, devise or purchase, any tract of land, not exceeding six hundred and forty acres, for the purposes of said poor-house.

Donations for poor-houses. SEC. 19. Said county commissioners' courts are hereby empowered to receive donations to aid in the establishment of such poor-house, and are also empowered, from time to time, if it shall see fit, to levy and collect a tax, not exceeding one-fourth of one per cent., on the taxable property of the county, and to appropriate the same to the purchase of land, not exceeding the aforesaid

Taxes for, may be levied.

six hundred and forty acres, and to erect and furnish buildings suitable to a poor-house, and to put it into operation, and to defray the annual expenses of said poor-house, should the labors of the inmates be inadequate thereto.

SEC. 20. Said county commissioners' courts are hereby authorized to employ such agents and other persons as may be necessary, to establish and put into operation such poor-house. Agents may be employed.

SEC. 21. Whenever any county commissioners' court shall enter upon their records, that they have established a poor-house, and that such poor-house is ready for the reception of the poor of the county, then the authority conferred upon the overseers of the poor shall cease to be in force in said county: *provided, however*, if there be any particular case or cases which the court should deem prudent to put out under the provisions of this chapter, they may do so, making a proper entry of the circumstances upon their records. When poor-house established, overseer's duty to cease. Proviso.

SEC. 22. The title to the property authorized to be acquired by this chapter, for the purpose of said poor-house, shall be made to the county. Title to land, in county.

SEC. 23. The county commissioners' court of any county in this state may, if they shall at any time deem it to the interest of said county, appropriate out of any fund appropriated to said county for any purpose, or other money belonging to said county, any sum, not exceeding two thousand five hundred dollars, for the purpose of purchasing a farm, and erecting thereon suitable buildings for a poor-house for said county, as contemplated in sections seventeen, eighteen and nineteen of this chapter. Poor-house farm may be purchased.

Approved March 3, 1845.

An Act to amend sections twelve and thirteen of chapter eighty of the Revised Statutes, entitled "Paupers."

SECTION 1. *Be it enacted by the People of the State of Illinois,* In force April 24, 1861. *represented in [the] General Assembly,* That section twelve of chapter eighty of the Revised Statutes, entitled "Paupers," be so amended as to read as follows: any person becoming chargeable as a pauper, in this state, shall be chargeable as such pauper in the county in which he or she resided at the commencement of six months immediately preceding such person becoming so chargeable. Prior law amended. Residence of pauper.

§ 2. That section thirteen of said chapter shall be so amended as to read as follows: If any person shall become chargeable in any county in which he or she did not reside at the commencement of the six months immediately preceding his or her becoming so chargeable, he or she shall be duly taken care of, by the proper authority of the county where he or she may be found; and it shall be the duty of the clerk of the county court to send notice, by mail, to the clerk of the county court in which such pauper resided, as before stated, that said person has become chargeable as a pauper, and requesting the authorities of said county to remove the said paupers forthwith and pay the expenses accrued in taking care of him or her. Non-resident paupers to be taken care of and expense charged to proper county.

Approved February 22, 1861.

An Act to amend an Act entitled "An Act to provide for Township Organization," and to extend the powers and duties of overseers of the poor.

Overseers of poor
may bind out
children of poor
persons.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That in all counties that have adopted, or may hereafter adopt, township organization, the overseers of the poor in their respective towns may, with the consent of the judge of the county court, bind out apprentices or servants, the minor children of any poor person who has become chargeable to their town, as having a lawful settlement therein, or who is supported there, in whole or in part, at the charge of the county; and also all minor children who are themselves chargeable to the town as having a lawful settlement therein, or as poor persons supported by the county: *provided*, that no minor shall be bound under the provisions of this act unless such minor shall have become chargeable as a pauper.¹

Proviso.

¹*Form of Indenture binding a poor Child by Overseer of the Poor.*

This indenture, made and entered into on the — day of —, A. D. 18—, by and between *Francis H. Porter*, overseer of the poor of the town of *Waukegan*, in the county of *Lake*, for the year 18—, of the first part, and *Samuel I. Bradbury*, of said town of the second part, witnesseth:

Whereas, it hath been made to appear to said overseer of the poor, that *John Jones* is the minor child of poor parents, who have become chargeable to said town as having a lawful settlement therein; (or who are supported, &c., stating such a case as comes within the law,) therefore the said overseer of the poor, by virtue and conformity to the law, in such case made and provided, hath bound the said *John Jones*, who is now of the age of — years, to the said *Samuel I. Bradbury*, as an apprentice to learn the art or trade of a *printer*, and as such apprentice, to dwell with and serve the said *Samuel I. Bradbury*, from the date hereof, until the said *John Jones* shall have attained the age of twenty-one years, which will be on the — day of —, 18—. And it is hereby agreed and understood that the said *John Jones* shall well and faithfully serve the said *Samuel I. Bradbury* during the said term, and shall obey all his lawful and reasonable commands; that he will not willingly do or suffer to be done, any harm or damage to the goods, property or interest of the said master; that he will not, without leave, absent himself from the service of his said master, but that he shall, in all things, during the said term, demean and behave himself as a good and faithful apprentice to his said master. And the said *Samuel I. Bradbury* doth, on his part, hereby covenant and agree, in consideration of the undertaking and binding aforesaid, to teach and instruct the said *John Jones* in the said trade of a *printer*, or otherwise cause him to be well and sufficiently taught and instructed in said trade; that he will furnish and provide, or cause to be found, furnished and provided, unto the said *John Jones*, meat, drink, lodging, and suitable and proper clothing in sickness and in health, and medicine, medical attendance, and nursing in sickness, during the said term. And the said *Samuel I. Bradbury* further covenants and agrees that he will teach, or cause to be taught, the said *John Jones* to read and write, and the ground rules of arithmetic; and at the expiration of said term, will pay to him, the said *John Jones*, the sum of — dollars, a new bible, and two complete suits of new wearing apparel suitable to his condition in life, (or such other instruction, benefit or allowance as may be agreed upon.)

In witness whereof, the said parties have hereto set their hands and seals on the day and year first above written.

FRANCIS H. PORTER, [SEAL.]
Overseer of the Poor of the town of Waukegan.
SAMUEL I. BRADBURY, [SEAL.]

§ 2. Such children, whether over or under the age of fourteen years may be bound—females to the age of eighteen years, and males to the age of twenty-one years—and provision shall be made in the contract for teaching such children to read, write, and the ground rules of arithmetic, and for such other instruction, benefit and allowance, either within or at the end of their term of apprenticeship, as the overseer may think reasonable. Term of service.

§ 3. No minor shall be so bound by the overseer of the poor unless by indentures of apprenticeship, executed in duplicate, by the overseer of the poor and by the master, one copy to be retained by the master, and one copy shall be, by the overseer of the poor, deposited with the town clerk, to be kept by said town clerk for the use of the minor. Indentures deposited with town clerk.

§ 4. All considerations of money, or other things paid or allowed by the master, upon any contract of service or apprenticeship, made in pursuance of this act, shall be paid or secured to the sole use of the minor hereby bound. Moneys or other property secured to minors.

§ 5. The overseers of the poor shall inquire into the treatment of all children bound by them, and of all who shall have been bound by their predecessors in office, and defend them from all cruelty, neglect and breach of contract on the part of their masters. Overseers to inquire into treatment.

§ 6. In case of any misconduct or neglect of the master, a complaint may be filed by the overseer of the poor, (or in case of absence of such overseer of the poor,) the supervisor of the town in which such minor was bound by the judge of the county court, setting forth the facts and circumstances of the case; and the said court, after having duly notified the master of such complaint, by giving said master at least ten days' notice of the time and place, that he will proceed to hear and determine the cause. Misconduct or neglect of master.

§ 7. After a free hearing of the parties, or of the complaint alone, if the master shall neglect to appear, the court may render a judgment or decree, that the minor be discharged from his apprenticeship or service, and for the costs of the suit against the master, and may issue execution for the same. Trial of parties. Judgment to be rendered.

§ 8. If the complaint shall not be maintained, and it shall appear to the satisfaction of the said court that the complaint was made without any just or reasonable cause, the court shall render judgment for the costs against the complainant. Where complaint is not maintained, judgment for costs.

§ 9. This act to take effect and be in force from and after its passage.

Approved March 4, 1854.

An Act authorizing boards of supervisors of the several counties to dispose of certain real estate therein named, and to confer upon them certain other powers.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly:* That the board of supervisors of the several counties in this state, which have adopted township organizations, be and they are hereby authorized and Board of supervisors may dispose of poor farms.

Deed of, how executed.

empowered to sell and dispose of the poor farms of their respective counties, at such time and on such terms as they may think proper, and upon said sale being made, and said premises being paid for according to the terms and conditions of said sale, it shall be the duty of the chairman of the board of supervisors to make, execute and deliver to the purchaser or purchasers of said farm, a good and sufficient deed therefor, in behalf of said county, which deed shall convey the interest of said county in and to said farm, to the said purchaser or purchasers thereof.

Former sales legalized.

§ 2. All sales of the poor farms belonging to the said counties of this state, heretofore made by the board of supervisors, are hereby confirmed, and it shall be the duty of the chairman of said board to convey said property by deed, as is provided for in the first section of this act.

Deeds on former sales, how executed.

§ 3. In all cases where any real estate has heretofore been sold by the board of supervisors of any county in this state, acting under township organization, or by the county commissioners of any such counties acting previous to the adoption of the township organization law, it shall be the duty of the chairman of the board of supervisors in any county where such sale or sales has been made as aforesaid, to convey the same by deed, in behalf of said county for which he may be acting, to the purchaser or purchasers of said real estate, which said deed shall convey the interest of said county in and to said real estate, to the purchaser or purchasers thereof.

§ 4. This act shall take effect and be in force from and after its passage.

Approved Feb. 15, 1855.

DIVISION V.

REVENUE.

ASSESSMENT AND COLLECTION.

An Act for the assessment of property, and the collection of taxes, in counties adopting the township organization law. In force Feb. 12, 1853.

SECTION 1. *Be it enacted by the people of the State of Illinois,* What property subject to taxation. That all property, whether real or personal in this state; all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, of persons residing in this state, or used or controlled by persons residing in this state; the property of corporations now existing or hereafter created, and the property of all banks, or banking companies, now existing, or hereafter created, and of all bankers and brokers, except such property as is hereinafter expressly exempted, shall be subject to taxation; and such property, moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, or the value thereof, shall be entered on the list of taxable property, for that purpose, in the manner prescribed in this act.¹

DEFINITIONS.

§ 2. The terms "real property" and "lands," wherever used in this act, shall be held to mean and include, not only the land itself, whether laid out in town lots or otherwise, with all things contained therein, but also all buildings, structures and improvements, and other fixtures, of whatsoever kind, thereon, and all rights and privileges belonging or in anywise pertaining thereto. The term "investments in bonds," wherever used in this act, shall be held to mean and include all moneys invested in bonds, of whatsoever kind, whether issued by incorporated or unincorporated companies, towns, cities, counties, states, or other corporations, or by the United States, held or controlled by persons residing in this state, whether for themselves, or as guardians, trustees or agents, on which the holder thereof is receiving or is entitled to receive Definitions of property. Real property and lands. Investments in bonds.

(1) See *Jacksonville v. McCormell*, 12 Ills., 138. *Ryan v. Gallatin Co.*, 14 Id., 78. *Manby et al. v. Gibson*, Id., 136. *Glancy v. Elliot*, Id., 436. *Sangamon & Morgan R. R. Co. v. Morgan*, Id., 163.

By reference to sec. 61 of this act, it will be seen that it is made the duty of the auditor of public accounts to make out and forward to the clerk of the county court of the several counties, for the use of such clerks and other officers, suitable forms and instructions for carrying this act into effect, which instructions, so given by the auditor, are to be strictly observed and complied with by the officers receiving them. The auditor is also required to give his opinion and advice on all questions of doubt, as to the true intent and meaning of this act; hence but few suggestions have been made in connection with this act, in relation to forms, or in other respects. This prerogative has therefore been left with the auditor, to whom, by law, it belongs, and to whom reference should always be made whenever questions arise, and his instructions, it seems, will be law.

Investments in stocks.	interest. The term "investment in stocks," wherever used in this act, shall be held to mean and include all moneys invested in the public stocks of this or any other state, or of the United States, or in any association, corporation, joint stock company, or otherwise, the stock or capital of which is or may be divided into shares, which are transferable by the owner, without the consent of the other partners or stockholders, for the taxation of which no special provision is made by this act, held by persons residing in this state, either for themselves, or as guardians, trustees or agents. The term
The term oath.	"oath," wherever used in this act, shall be held to mean oath or affirmation. Every word in this act importing the masculine
Word of masculine gender includes females. The term personal property.	gender, may extend and be applied to females as well as males. The term "personal property," wherever used in this act, shall be held to mean and include every tangible thing being the subject of ownership, whether animate or inanimate, other than money, and not forming part or any parcel of real property, as hereinbefore defined. The capital stock, undivided profits, and all other means, not forming part or the capital stock of every company, whether incorporated or unincorporated, and every share, portion or interest in such stock, profits, or means, by whatsoever name they may be designated, inclusive of every share or portion, right or interest, either legal or equitable, in and to every ship, vessel, or boat, of whatsoever name or description, used or designed to be used, either exclusively or partially, in navigating any of the waters within or bordering on this state, whether such ship, vessel, or boat, shall be within the jurisdiction of this state or elsewhere, and whether the same shall have been enrolled, registered or licensed at any collector's office, or within any county or collector's district in this state or not. The term "money" or "moneys" wherever used in
Capital stock.	this act, shall be held to mean gold and silver coin, and bank notes in actual possession, and every deposit which the person owning, holding in trust, or having the beneficial interest therein, is entitled to withdraw in money on demand. The term "credits," wherever
Ship, vessel, or boat.	used in this act, shall be held to mean and include every claim or demand for money, labor, or other valuable thing, due or to become due, or every annuity, or sum of money receivable at stated periods, and all money invested in property of any kind which is secured by deed, mortgage or otherwise, which the person holding such deed, or mortgage or evidence of claim, is bound by any lease, contract or agreement, to re-convey, release, or assign, upon the
Term money or moneys.	payment of any specific sum or sums; <i>provided</i> , that pensions receivable from the United States, or from any state, salaries or payments expected to be received for labor or services to be performed or rendered, shall not be held to be annuities within the meaning of this act. The term "property," wherever used in this
The term credits.	act, shall be held to mean and include every tangible thing being the subject of ownership, whether animate or inanimate, real or personal.
Proviso.	
The term property	

PROPERTY EXEMPT FROM TAXATION.

§ 3. All property described in this section, to the extent herein Property exempt. limited, shall be exempt from taxation; that is to say—

First. All lands donated for school purposes, and not sold or School lands, leased. All public school houses, and houses used exclusively for school houses and public worship, the books and furniture therein, and the grounds houses for public attached to such building necessary for the proper occupancy, use worship. and enjoyment of the same, and not leased or otherwise used with a view to profit. All colleges, academies; all endowments made for Colleges. their support; all buildings connected with the same, and all lands connected with institutions of learning, not used with a view to profit. This provision shall not extend to leasehold estates of real prop- Exception. erty, held under the authority of any college or university of learning.

Second. All lands used exclusively as grave-yards, or grounds Grave-yards. for burying the dead.

Third. All government lands belonging to the United States, Government, and and all property, whether real or personal, belonging to this state, swamp lands. and all the swamp and overflowed lands belonging to the several counties of this state, so long as the same may remain unsold by such counties.

Fourth. All buildings belonging to counties, used for holding County build- ings. courts, for jails, or for county offices, with the ground on which such buildings are erected, not exceeding in any county ten acres.

Fifth. All lands, houses, and other buildings belonging to any Almshouses. county, town or city, used exclusively for the accommodation or the support of the poor.

Sixth. All buildings, with the furniture appertaining thereto, Buildings of belonging to institutions of purely public charity, together with charitable in- stitutions. the lands actually occupied by such institutions, not leased or otherwise used with a view to profit; and all moneys and credits appropriated solely to sustaining, and belonging exclusively to such institutions.

Seventh. All fire engines, and other implements used for the Fire engines and extinguishment of fires, with the buildings used exclusively for the implements. safe keeping thereof, and for the meetings of fire companies, whether belonging to any town, or to any fire company organized therein.

Eighth. All market houses, public squares, or other public Public grounds. grounds, used exclusively for public purposes; and all works, machinery, and fixtures, belonging exclusively to any town or city, and used exclusively for conveying water to such town or city.

Ninth. No person shall be required to list a greater portion of Personal credits. any credits that [than] he believes will be received or can be collected; nor any greater portion of any obligation given to secure the payment of rent, than the amount that shall have accrued on the lease and shall remain unpaid at the time of such listing. No person shall be required to include in his statement, as a part of Investments in personal property, moneys, credits, investments in bonds, stocks, joint stock com- panies.

joint stock companies, or otherwise, which he is required to list, any share or portion of the capital stock or property of any company or corporation which is required to list or return its capital and property for taxation in this state, nor shall any partner be required to list or return any property, liability or supposed balance of said partnership, due him, the property, effects, and credits of said partnership being listed by any other partner.

BY WHOM, WHERE, AND IN WHAT MANNER PROPERTY SHALL BE LISTED.

- Property, when listed, and how. § 4. Every person of full age and sound mind, not a married woman, shall list the real property of which he is the owner, situate in the town or district in which he resides, the personal property of which he is the owner, all moneys in his possession, money loaned or invested, and all other property of which he is owner; and he shall also list all moneys invested, loaned, or otherwise controlled by him, as the agent or attorney, or on account of any other person or persons, company or corporation whatsoever, and all moneys deposited, subject to his order, check or draft, and credits due from or owing by any person or persons, body corporate or politic, whether in or out of such county. The property of every ward shall be listed by his guardian; of every minor, child, idiot or lunatic, having no other guardian, by his father, if living, if not, by his mother, if living, and if neither father nor mother be living, by the person having such property in charge; of every wife by her husband, if of sound mind, if not by herself; of every person for whose benefit property is held in trust, by the trustee; of the estate of a deceased person, by the executor or administrator; of corporations whose assets are in the hands of receivers, by such receivers; of every company, firm, body politic or corporate, by the president or principal accounting officer, partner, or agent thereof. Every person required to list property on behalf of others, by the provisions of this act, shall list it in the same county, town or district in which he would be required to list it if such property were his own; but he shall list it separately from his own, specifying in each case the name of the person, estate, company or corporation to whom it belongs. Real property shall be listed in the county, town or district where it belongs; personal property, moneys and credits, except such as is required to be listed otherwise, shall be listed in the county, town, or district where the owner resides; the property of banks or bankers, brokers, stock jobbers, insurance or other companies, merchants, and manufacturers, shall be listed in the county, town or district where their business is usually done: *provided*, that in the counties of the Military Tract, owners of real estate shall not be compelled to return the same if they desire it [to] go to sale, and so inform the assessor.
- Property of ward, of minors, idiots, lunatics, how listed.
- Of married women.
- Estates of deceased persons.
- Corporations.
- Persons listing in behalf of others.
- Real and personal property where listed.
- Bankers and brokers.
- Proviso as to military tract.
- Property leased by societies by whom listed.
- § 5. Property held under a lease for a term exceeding ten years, belonging to the state, or to any religious, scientific or benevo-

lent society or institution, whether incorporated or unincorporated and school and ministerial lands, shall be considered, for all purposes of taxation, as the property of the person so holding the same, and shall be listed as such, by such person, or his agent, as in other cases.

§ 6. Each person required to list property, shall make out, sign and deliver to the assessor, when required, a certified statement of all the personal property, moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, in his possession or under the control of such person, which he is required to list for taxation, either as owner or holder thereof, or as a guardian, parent, husband, trustee, executor, administrator, receiver, accounting officer, partner, agent or factor. Personal property shall be listed with reference to the quantity on hand and owned on the first day of May in the year for which the property is required to be listed, including the property purchased on that day.

Certified statement of personal property required.

Date of listing personal property.

§ 7. Such statement shall truly and distinctly set forth :

First. The number of horses, and the value thereof.

What statement shall contain.

Horses.

Second. The number of neat cattle, and the value thereof.

Cattle.

Third. The number of mules and asses, and the value thereof.

Mules and Asses.

Fourth. The number of sheep, and the value thereof.

Sheep.

Fifth. The number of hogs, and value thereof.

Hogs.

Sixth. Every carriage and wagon, of whatsoever kind, and the value thereof.

Carriages and wagons.

Seventh. Every watch and clock, and the value thereof.

Watches and clocks.

Eighth. Every piano forte, and the value thereof.

Piano fortes.

Ninth. The value of the goods and merchandise which such person is required to list as a merchant.

Merchandise.

Tenth. The value of the property which such person is required to list as a banker, broker or stock jobber.

Banker's property.

Eleventh. The value of materials and manufactured articles which such person is required to list as a manufacturer.

Manufactured articles.

Twelfth. The value of moneys and credits required to be listed.

Moneys and credits.

Thirteenth. The value of moneys invested in bonds, stocks, joint stock companies, or otherwise, which such person is required to list.

Bonds and stocks.

Fourteenth. The total value of all other personal property, including household furniture : *provided*, that the value of such property shall be determined by the assessor.

Other personal property, assessed or to value.

§ 8. If any person shall give a false and fraudulent list, or shall refuse to deliver to the assessor, when called on for that purpose, a list of his or her taxable property, as required by law, the assessor, as a penalty therefor, shall assess the property of such person at double its value ; and if said assessor shall neglect or refuse so to do, he shall be liable in each case to a penalty of fifty dollars, to be recovered at the suit of any person who may sue for the same.

Person giving false list to be assessed double.

§ 9. If the assessor believes that any property has been valued at less than its true value, in accordance with the rules and cus-

When assessment too low.

Duty of assessor. toms of valuing property for taxation, he shall value and charge such property at its true value, and shall notify the person listing such property of such increased valuation.

RULES FOR VALUING PROPERTY.

Property,
how valued

§ 10. Each separate parcel of property shall be valued at its true value in money, excluding the value of crops growing thereon; but the price for which such real property would sell at a forced sale shall not be taken as the criterion of such value. Each tract or lot of real property belonging to this state, or to any county, city, town, or charitable institution, whether incorporated or unincorporated, and school or ministerial lands, held under a lease for a term exceeding ten years, shall be valued at such a price as the assessor believes could be obtained at private sale for such leasehold state. Personal property of every description shall be valued at the usual selling price of similar property at the time of listing and in the county where the same may then be; and if there be no usual selling price known to the person whose duty it shall be to fix a value thereon, then at such price as it is believed could be obtained therefor in money at such time and place. Investments in bonds, stocks, joint stock companies, or otherwise, shall be valued at the true value thereof in money. Money, whether in possession or on deposit, shall be entered in the statement at the full amount thereof: *provided*, that depreciated bank notes shall be entered at their current value. Every credit for a sum certain, payable either in money or property of any kind, shall be valued at the full price of the sum so payable; if for a specific article, or for a specified number or quantity of any article or articles of property, or for a certain amount of labor done, or for services of any kind rendered, it shall be valued at the current price of such property, or of such labor or service, at the place payable. Annuities, or moneys receivable at stated periods, shall be valued at the price which the person listing the same believes them to be worth in money.

Personal property
at usual selling price.

Investments in
stocks.
Money.

Proviso.
Credits at full
sum.

Annuities.

OF DEDUCTIONS MADE FROM MONEYS AND CREDITS.

Deductions for
bona fide debts.

§ 11. In making up the amount of moneys and credits which any person is required to list for himself, or any other person, company or corporation, he shall be entitled to deduct from the gross amount of moneys and credits, the amount of all *bona fide* debts owing by such person, company or corporation, to any other person, company or corporation, for a consideration received; but no acknowledgment of indebtedness not founded on actual consideration, believed when received to have been adequate, and no such acknowledgment made for the purpose of being so deducted, shall be considered a debt within the meaning of this section; and so much only of any liability, as surety for others, shall be deducted as the person making out the statement believes the surety is legally and equitably bound to pay, and so much only as he believes

such surety will be compelled to pay on account of the inability or insolvency of the principal debtor; and if there are other sureties, who are able to contribute, then only so much as the surety in whose behalf the statement is made, will be bound to contribute: *provided*, that nothing in this section shall be so construed as to apply to any bank, company or corporation exercising banking powers or privileges. Not to apply to banks.

§ 12. No person, company or corporation, shall be entitled to any deduction on account of any bond, note or obligation of any kind, given to any mutual insurance company, nor on account of any unpaid subscription to any religious, literary, scientific, or charitable institution, or society; nor on account of any subscriptions to or installment payable on the capital stock of any company, whether incorporated or unincorporated. No deduction on obligations to insurance companies or unpaid stock.

OF LISTING AND VALUING THE PROPERTY OF MERCHANTS AND MANUFACTURERS, AND OF BANKERS, EXCHANGE BROKERS, AND STOCK JOBBERS.

§ 13. Every person that shall own or have in his possession, or subject to his control, any personal property within this state, with authority to sell the same, which shall have been purchased in or out of this state, with a view to being sold at an advanced price or profit, or which shall have been consigned to him from any place out of this state, for the purpose of being sold at any place within this state, shall be held to be a merchant; and when he shall be by this act required to make out and deliver to the assessor a statement of his other personal property, he shall state the value of such property appertaining to his business as a merchant; and in estimating the value thereof, he shall take as the criterion the average value of all such articles of personal property which he shall have had from time to time in his possession, or under his control, during the year next previous to the time of making such statement, if he shall have been so long engaged in business, and if not, then during such time as he shall have been so engaged; and the average shall be made up by taking the amount in value on hand, as nearly as may be, in each month of the next preceding year in which the person making such statement shall have been in business, adding together such amount and dividing the aggregate amount thereof by the number of months that the person making the statement may have been in business during the preceding year: *provided*, that no consignee shall be required to list for taxation the value of any property, the product of this state, which shall have been consigned to him for sale, or otherwise, from any place within the state, nor the value of any property consigned to him from any there [other] place for the sole purpose of being stored or forwarded: *provided*, he shall in either case have no interest in such property, or any profit to be derived from its sale; and the word *person*, as used in this and the succeeding sec- Assessment of property of non-residents, bankers, manufacturers, &c. Proviso.

Person includes firm and corporation.

Who are manufacturers.

Manufacturing stock included in assessment.

Products of this state excluded.

Machinery to be listed.

What constitutes a banker, broker, &c.

Deliver to assessor statement of personal property.

tions, shall be held to mean and include firm, company and incorporation.

§ 14. Every person who shall purchase, receive or hold personal property of any description, for the purpose of adding to the value thereof, by any process of manufacturing, refining, rectifying, or by the combination of different materials, with the view of making a gain or profit by so doing, shall be held to be a manufacturer; and he shall when he is required to make out and deliver to the assessor a statement of the amount of his personal property subject to taxation, also include in his statement the average value, estimated as provided in the preceding section, of all articles purchased or otherwise held for the purpose of being used, in whole or in part in any process or operation of manufacturing, combining, rectifying, or refining, which from time to time he shall have had on hand during the year next previous to the time of making such statement, if he shall have been so long engaged in such manufacturing business, and if not, then during the time he shall have been so engaged: *provided*, that from the value of the property, being the product of this state, the merchant or manufacturer listing the same, shall be entitled to deduct the amount owing by him for such property, or for moneys invested therein: *and provided further*, that from the value of property, being the product of stock of this state, the farmer or dealer listing the same shall be entitled to deduct the amount owing by him for such property, or for moneys invested therein.

§ 15. Every person owning a manufacturing establishment of any kind, and every manufacturer, shall list, as a part of his manufacturer's stock, the value of all engines and machinery of every description, used or designed to be used in any process of refining or manufacturing, (except such fixtures as shall have been considered as part of any parcel or parcels of real property,) including all tools and implements of every kind, used or designed to be used for the aforesaid purposes.

§ 16. Every person who shall have money employed in the business of dealing in coin, notes or bills of exchange, or in the business of dealing in or buying or selling any kind of bills of exchange, checks, drafts, bank notes, promissory notes, bonds, or other writing obligatory, or stocks of any kind or description whatsoever, shall be held to be a banker, broker, or stock jobber: and he shall, when he is required to make out and deliver to the assessor a statement of the amount or value of his other personal property subject to taxation, also include in his statement the average value, estimated as provided in the thirteenth section of this act, of all moneys, notes, bills of exchange, bonds, stocks, or other property appertaining to his business as a banker, broker, or stock jobber, which he shall have had from time [to] time in his possession or under his control, during the year next previous to the time of making such statement, if he shall have been so long engaged in such business, and if not, then during the time he shall have been so engaged.

§ 17. That when any person shall commence merchandising in any county after the first day of May in any year, the average value of whose personal property employed in merchandising shall not have been previously entered on the assessor's list for taxation in said county, said person shall report to the clerk of the said county, who shall enter the same upon the tax list, the probable average value of the personal property by him intended to be employed in merchandising until the first of May thereafter, and shall pay to the collector of such county a sum which shall bear the same proportion to the levy for all purposes, on the average value so employed, as the time from the day on which he shall commence merchandising as aforesaid, to the first of May next succeeding, shall bear to one year: *provided*, that if the person so listing his merchant's capital shall present a *bona fide* receipt from the collector of any county in which such merchant's capital had been previously listed and taxed for the amount of the taxes assessed, and by him paid, on the same capital for the same year, then and in that case it shall be a receipt from paying taxes again on such capital: *provided further*, that if the tax list had been delivered to the collector before the receipt of such report, it shall be the duty of the clerk, within ten days after receiving any such report, to charge the same to the collector, and to notify such collector of the amount so charged, who shall collect and pay over said amount in like manner, as near as may be, as if it had been regularly entered on the tax list.

Merchants commencing after first day of May, shall report to county clerk.

Proviso; where previously listed.

Further proviso.

§ 18. That when any person shall commence or engage in the business of dealing in stocks of any description, or in buying or selling any kind of bills of exchange, checks, drafts, bank notes, promissory notes, or other kind of writing obligatory, as mentioned in the sixteenth section of this act, after the first day of May, in any year, the average value of whose personal property employed in such business shall not have been previously entered on the assessor's list for taxation in said county, such person shall report to the county clerk of the county, the probable average value of the property by him intended to be employed in such business until the first day of May thereafter; which amount shall be entered on the tax list, and the taxes collected as in other cases.

Bankers and brokers commencing after first day of May to make additional report to county clerk.

§ 19. That if any person shall commence or engage in the business of merchandising, banking, brokerage or stock jobbing, and shall not within one month thereafter list his property as before required, he shall forfeit and pay, in addition to the taxes authorized by law, a tax of two per cent. on the value of the personal property by him so employed, for the use of the county, to be charged and collected in like manner as other taxes; said value to be ascertained as near as may be, by the assessor, or if he has made return of the assessment list, then by the clerk.

Penalty for failure to report.

OF LISTING AND VALUING THE PROPERTY OF BANKS AND
BANKING COMPANIES, AND OTHER CORPORATIONS.

Listing of prop-
erty of banking
companies and
corporations.

§ 20. It shall be the duty of the president and cashier of every bank or banking company that shall have been or may be hereafter incorporated by the laws of this state, and having the right to issue bills for circulation as money, to make out and return to the bank commissioners, in the month of May, annually, a written statement containing the average amount of notes and bills discounted or purchased by such bank or banking company, which amount shall include all the loans or discounts of such bank or banking company, whether originally made or renewed during the year next preceding the first of May, aforesaid, or at any time previous, whether made on bills of exchange, notes, bonds, mortgages, or any other evidence of indebtedness, at their actual value in money, whether due previous to, during, or after the period aforesaid, and on which such bank or banking company has at any time reserved or received, or is entitled to receive any profit or other consideration whatever, either in the shape of interest, discount, exchange or otherwise. Stocks deposited with the state treasurer shall be valued at the rate at which they are deposited. The bank commissioners shall proceed to ascertain the amount of the property valued in accordance with the provisions of this act, and make return thereof to the auditor, who shall report the same to the clerk of the proper county, and said clerk shall enter the same on the tax list for taxation.

Duty of bank
commissioners

Notes and bills
discounted.
Amount, how
ascertained.

§ 21. To ascertain the amount of the notes and bills discounted and purchased, and all other effects or dues, of every description, belonging to such bank or banking company, and liable to taxation, there shall be taken as a criterion the average amount of the aforesaid items for each month during the year next previous to the time of making such statement, if such bank or banking company shall have been so long engaged in business, and if not, then during such time as such bank or banking company shall have been engaged in business; and the average shall be made by adding together the amount so found belonging to such bank or banking company in each month said bank or banking company was so engaged in business, and dividing the same by the number of months said bank or banking company was thus engaged in business.

Other companies
to list.

§ 22. The president, secretary, or principal accounting officer of every railroad company, turnpike or plank road company, insurance company, telegraph company, or other joint stock company, except corporations whose taxation is specifically provided for by law, for whatever purpose they may have been created, whether incorporated by any law of this state or not, shall list for taxation, at its actual value, its real and personal property, moneys, credits, within this state, in the manner following:

Exception.

In all cases return shall be made to the assessor of each of the respective counties where such property may be situated, together

with a statement of the amount of said property which is situated in each county, town, city, or ward therein.

The value of all moveable property shall be added to the stationary and fixed property and real estate, and apportioned to such wards, towns, cities, and counties, *pro rata*, in proportion to the value of the real estate and fixed property in said ward, town, city or county. The capital stock of bridge companies shall be assessed in the town where their principal office is located.

Value of moveable property added to fixed property.

Bridge companies, where assessed.

If the county assessor to whom returns are made is of opinion that false or incorrect valuations have been made, or that the property of the corporation or association has not been listed at its true value, or that it has not been listed in the location where it properly belongs, or in cases where no return has been made to the county assessor, he is hereby required to proceed to have the same valued and assessed in the same manner as is prescribed in the several sections of this act regulating the duties of county assessors in cases of refusal or neglect to list property: *provided*, that every agency of an insurance company, incorporated by the authority of any other state or government, shall return to the assessor of the county in which the office or agency of such company may be kept, in the month of May, annually, the amount of the gross receipts of such agency, which shall be entered on the tax list of the proper county and subject to the same rate of taxation for all purposes that other personal property is subject to at the place where located.

In case of false valuation.

Duty of county assessor.

Provide as to insurance agencies.

ASSESSORS. THEIR DUTIES. WHEN PROPERTY TO BE ASSESSED, ETC.

§ 23. All property, except real property, shall be assessed, annually; real property shall be assessed, as provided for by this act, in the year 1853, and every two years thereafter, until otherwise provided for by law.¹

Property how often assessed.

§ 24. All lands and town lots owned by any person, and not situated in the town where such owner may reside, shall be taxed as non-resident, and assessed in the town where the same shall lie.

Non-resident lands and lots.

§ 25. Every assessor before he enters upon the duties of his office, shall take and subscribe an oath that he will, according to the best of his judgment, skill and ability, diligently, faithfully and impartially, perform all the duties enjoined on him as such assessor.²

Assessor's official oath.

§ 26. If any person elected to the office of county treasurer

If treasurer fails

(1) Amended, see *ante*, p. 59, sec. 6—real property is now required to be assessed annually.

²Form of Assessor's Oath on entering upon the duties of his office.

STATE OF ILLINOIS, }
Lake County, } ss.

I, Daniel Brewer, being elected Assessor in and for the town of Waukegan in the county of Lake, for the year 1856, do solemnly swear that I will support the Constitution of the United States, and of the state of Illinois, and I will, according to the best of my judgment, skill and ability, diligently,

to give bond or take oath. shall fail to give bond as collector, or shall neglect or refuse to take an oath as required by this act, his office shall be considered vacant, and the board of supervisors shall be immediately called together by the county clerk, and shall forthwith fill such vacancy by the appointment of some suitable person, who shall qualify and discharge the duties of such treasurer and collector, in like manner as if he had been regularly elected to said office, until one is elected and qualified.

Office become vacant, supervisors to fill vacancy. § 27. The assessor shall, between the first days of May and July, and after being furnished with the necessary blanks, proceed to take a list of the taxable property in his town, and assess the value thereof in the manner following, to wit:

Assessor when to proceed to take list. He shall call at the office, place of doing business, or residence of each person required by this act to list property, and shall require such person to make a correct statement of his taxable property, in accordance with the provisions of this act, and the assessor, or the person listing the property, shall enter a true and correct statement of such property and the value thereof, in a printed or written blank prepared for that purpose; which statement, after being filled out, shall be signed by the person listing the property, and delivered to the assessor.

Should owner be sick or absent. § 28. If any person required by this act to list property shall be sick or absent when the assessor calls for a list of his property, the assessor shall leave at the office, usual place of residence or business of such person a written or printed notice, requiring such person to make out and leave at the usual place of collecting taxes in that precinct, or at the office of said assessor, on or before some convenient day named therein, a statement of the property which he is required to list, and shall leave with such notice a printed or written blank for the statement required of such person. The date of leaving such notice, and the name of the person required to list the property, shall be carefully noted by the assessor in a book to be kept for that purpose; and if any such person shall neglect or refuse to deliver the statement, properly made out and signed as required, the assessor shall make the assessment as required by this act.

Duty of assessor. Date of leaving notice to be noted. § 29. Assessors and deputy assessors, justices of the peace and clerks of the county courts, are authorized and empowered to administer any oath relating to the assessment of property required by this act.

Oaths, who shall administer. Refusal to list property. § 30. In every case where any person shall refuse to make out and deliver to the assessor a statement of the personal property, moneys, and credits which he is required to list, as provided by faithfully and impartially perform all the duties enjoined on me as such assessor.

(Add the Dueling clause, according to the form on page 36.)

DANIEL BREWER.

Taken and subscribed before me, }
this — day of —, A. D. 18—. }
HIRAM HUGGIN, Justice of the Peace.

this act, the assessor shall, in every such case, proceed to ascertain the number of each description of the several articles of personal property subject to taxation enumerated in this act, the value thereof, the value of the personal property subject to taxation other than enumerated articles, and the value of the moneys and credits of which a statement shall have been withheld as aforesaid, as the case may require; and to enable him so to do, he is hereby authorized to examine on oath any person whom he may suppose to have knowledge of the amount or value of the personal property, moneys or credits, which the person so refusing was required to list.

§ 31. If any person who shall be required by the assessor to give evidence, as provided in the preceding section, shall refuse to be sworn by the assessor, or having been sworn, if he shall refuse to answer such questions as the assessor shall put to him touching the subject of inquiry, any justice of the peace of the town or district, to whom the assessor may make application therefor, shall summon such person to appear before him at such time as the assessor shall designate, and answer on oath all pertinent questions which may be put to him by the assessor, or his order, touching the amount and value of the personal property, moneys and credits which the person required to list the same on oath has refused to list; and every constable and witness shall be subject to the same penalties for refusal or neglect to obey the process of such justice, as they are by law subject to for refusing to obey the process of justices of the peace in civil cases; and shall receive the same fees allowed for like services in civil cases, and such justice of the peace shall immediately proceed to enter judgment for all such fees and for his own costs in favor of the state of Illinois, against the person who shall have refused to make and deliver to the assessor a statement of the property which, by this act, he was required to list, and proceed to collect and pay over the same as in civil cases.

§ 32. On the last Saturday in June, the assessor, town clerk and supervisor shall attend at the office of the town clerk, for the purpose of reviewing the assessment list, and on the application of any person conceiving himself aggrieved, they shall review the assessment, and when the person objecting thereto shall make an affidavit that the value of his personal estate does not exceed a certain sum specified in such affidavit, the assessor shall reduce the assessment to the sum specified in such affidavit, and if he, or any other, objects to the valuation put upon any of their real estate, the board shall hear the objections, and may reduce the same, if a majority of the board think it advisable, and in such case the assessor shall correct his list.¹

§ 33. Each town assessor shall, on or before the first day of July, annually make out and deliver to the clerk of his county, in tabular form and alphabetical order, the names of the several persons, companies or corporations, in whose names any personal

Duty of assessor.

Refusal to give evidence.

Justice may summon person to appear and answer on oath.

Constable and witness to obey process.

Judgment for costs.

Remedy for excessive valuation.

Assessor to make out valuation lists for clerk.

(1) Amended, see *ante* p. 60, section 13.

Board of supervisors may abate taxes where property is not liable to be assessed.

Decision not final unless approved by auditor.

Where property not listed by owner.

Return of taxable property.

Assessor's oath attached to return.

Form of assessor's oath.

property, moneys or credits shall have been listed in his county, and separately in appropriate columns, opposite each name, the number and value of all articles of personal property enumerated in this act, the value of all non-enumerated articles of personal property, other than the stock of merchants and manufacturers, the value of merchants' and manufacturers' stock, and the value of the moneys and credits listed by said persons. If any person is assessed on property which he believes is not properly and legally liable to taxation, he may apply to the board of supervisors, at their annual meeting, for an abatement of such assessment, and the said board shall hear and determine the matter; but if said board shall decide that any such property is not liable to taxation, and the question as to the liability of such property to taxation has not been previously settled, the decision of said board shall not be final, unless approved by the auditor of public accounts; and it shall be the duty of the clerk of said board, in all such cases, to make out and forward to the auditor a full and complete statement of all the facts in the case. If the auditor is satisfied that such property is not legally liable to taxation, he shall notify the clerk of his approval of the decision of the board, and the said clerk shall correct the assessment accordingly. But if the auditor believes that the board has erred in deciding that such property was not liable to taxation at the time of making the assessment he shall advise the clerk of his objections to the decision of the board, and give notice to said clerk that he will apply to the supreme court, at the next term thereof, for an order to set aside and reverse the decision of the board of supervisors. Upon the receipt of such notice, the clerk shall notify the person making application therefor. And it shall be the duty of the auditor to file in the supreme court a certified statement of the facts certified by the clerk, as aforesaid, together with his objections thereto, and the court shall hear and determine the matter, as the right of the case may be¹

§ 34. In all cases where the property is not listed by the owner, the assessor shall note opposite the name the words "by assessor."

§ 35. Each town assessor shall, at the time he is required by this act to make his return of taxable property to the county clerk, also deliver to him all the statements of property which he shall have received from persons required to list the same, arranged in alphabetical order, and the clerk shall carefully file and preserve the same for one year thereafter.

§ 36. Each town assessor shall take and subscribe an oath, which shall be certified by the magistrate or clerk administering the same and attached to the return which he is required to make to the county, in the following form, as near as may be :

"I, ———, assessor in the town of ———, do solemnly swear that the value of all personal property, moneys and credits required to be listed for

(1) No appeal lies to the circuit court, from the decision of the board of supervisors in reference to property claimed to be exempt from taxation.—*Worthington v. Co. of Pike*, 23 Ill., 363.

taxation by me, is truly returned and set forth in the annexed list, and that in every case I have diligently and by the best means in my power, endeavored to ascertain the true amount and value of all taxable property, moneys and credits; and that, as I verily believe, the full value thereof, estimated by the rules prescribed by said act, is set forth in the list aforesaid; that in no case knowingly have I omitted to assess any property which by law I am required to assess, nor have I in any way connived at any violation or evasion of any of the requirements [of] the law in relation to the listing or valuation of property, moneys, or credits of any kind for taxation."

§ 37. In all cases in which town assessors are required, in consequence of the sickness or absence of the person whose duty it is to make out a statement of personal property, moneys and credits, or in consequence of his neglect or refusal to make out and deliver such statement, to ascertain the amount and value of such personal property, moneys and credits, if the assessor shall be unable to obtain positive evidence of the amount and value of such property, moneys and credits, he shall return such amount and value as from general reputation and his own knowledge of facts and circumstances, he believes to be the full amount and value of such property, moneys and credits.¹

In case of inability of assessor to ascertain value of property.

Shall act from general reputation.

§ 38. The assessor, or some suitable person employed by him for that purpose, shall add up the several columns containing the number and value of each article of property enumerated, the value of unenumerated articles, the value of each of the other items of property enumerated in the seventh section of this act, and the total value thereof, and note the aggregate of each column at the bottom thereof, and shall make out and deliver to the clerk, with the assessment list, an abstract of the several footings on each page, showing separately the aggregate number and value of each enumerated article of property, and the value of each kind of all other property assessed. The correctness of such abstract shall be verified by the oath of the assessor or person who shall have made such additions.

Assessors to deliver abstract to clerk.

Oath of correctness.

REAL PROPERTY—HOW, AND IN WHAT MANNER LISTED.

§ 39. It shall be the duty of each assessor, upon being furnished with the list and blanks provided for in this act, from actual view or from the best sources of information that can be obtained, to determine as nearly as practicable, the true value of each separate parcel of real property in his town, according to the rules prescribed by this act for valuing real property, and such value shall be noted opposite each parcel of real property, in a column provided for that purpose; and he shall note opposite each tract not listed by a resident of the town the letter "N," denoting non-resident.

Assessor to proceed and determine value of real property.

Shall note non-resident land.

§ 40. The assessor shall add up the valuation of the real property, and shall set down in figures on each page the total value of the property listed thereon, and shall make out a statement showing

Statement and return.

(1) *Weaver v. Devendorf*, 3 Denio, 117.

- Time of making return. ing the aggregate value of the lands, and the aggregate value of town lots. The assessor shall complete the assessment and make return thereof to the clerk of the county court, on or before the first Monday in July, annually.
- Assessor's oath on return. § 41. Each assessor shall take and subscribe an oath, which shall be certified by the magistrate or clerk administering the same, and attached to the return which he is required to make to the county clerk, as near as may be, in the following form:
- Form of oath. I, A. B., assessor of the town of ———, do solemnly swear that the return to which this is attached, contains a correct description of each parcel of real property subject to taxation within said town, so far as I have been able to ascertain the same, and that the value attached to each parcel in said return is, as I verily believe, the full value thereof, estimated agreeably to the rules prescribed therefor in the act for the assessment of property and the collection of taxes, and that the aggregate value, as set forth in the statement returned herewith, is true and correct, as I verily believe.
- Clerk shall compare lists. The clerk, upon the receipt of the several assessment rolls, shall carefully compare the same with the list of taxable land on file in his office, correcting all errors which he may discover, and add to the roll of the proper town the name of the purchaser and the description of all such lands as has been omitted by the assessor, which are liable to taxation. He shall then make a fair copy of the several assessment rolls; which copy, together with the original, shall be laid before the board of supervisors at their annual meeting in each year; for which service said clerk shall be allowed a sum not exceeding two cents for each tract of land, and one cent on each town lot contained in said rolls, and where the real estate and personal property are separate, one half cent for each person's name and valuation of personal property contained in said rolls.
- Shall lay copy of rolls before board of supervisors. § 42. If any assessor shall willfully refuse or neglect to perform any of the duties required of him by this act, he shall forfeit to the people of this state the sum of fifty dollars, and be liable for all damages sustained by any such refusal or neglect.
- Penalty for neglect of duty by assessor. § 43. The board of supervisors of each county in this state, at their annual meeting, shall examine the assessment rolls of the several towns in their county, for the purpose of ascertaining the aggregate valuation of property in each town; and they shall assess the value of all such lands and lots as have been omitted by the assessor, and listed by the clerk, and cause the same to be placed opposite the description of said lands in a column prepared for that purpose.
- Board to examine assessment list. § 44. They shall, at their annual meeting, fix a certain rate upon the hundred dollars, to be levied upon the taxable property, both real and personal, in their respective counties, for county purposes, which they shall cause to be entered upon their record; and they shall, at the same time, also enter upon their record the amount to be collected in each town for town purposes. The clerk of the county court shall carefully compare the copy made by him with the original assessment roll, [and when so compared and corrected he shall cause the taxes to be extended on said copy, and
- Shall assess omitted lands.
- Board to fix rate for taxation.
- Clerk to compare copy with original roll.

shall also cause to be endorsed on the original assessment roll,] the amount per cent. levied on each one hundred dollars' worth of property, as taxes thereon, which original roll shall remain in the county clerk's office until the month of March next thereafter. The town clerks shall call on the county clerk during the month of March in each year, for the original assessment rolls of the previous year of their respective towns, which rolls they shall file in their respective offices, for the use of the town.

Town clerk to call for roll.

§ 45. The county clerk shall cause to be estimated and set down in a separate column, to be prepared for that purpose, in the copied assessment roll, opposite the several sums set down as the valuation of real and personal estate, the respective sums in dollars and cents, respecting the fractions of a cent, to be paid as tax thereon.

Clerk to estimate tax.

§ 46. The county clerk shall cause the copied and corrected assessment roll of each town or district in their respective counties, with the taxes extended thereon, to be delivered to the collector of such town or district, on or before the fifteenth day of November in each year.

Clerk to deliver list to collectors.

§ 47. To each assessment roll a warrant, under the hand of the county clerk, and seal of the county court, shall be annexed, commanding such collector to collect from the several persons named in the assessment roll the several sums mentioned in the last column of such roll, opposite their respective names. The warrant shall direct the collector, out of the moneys to be collected, after deducting the compensation to which he may be legally entitled, to pay over to the commissioners of highways the amount of tax collected for the support of highways and bridges, and to the supervisor of the town all other moneys which shall have been collected therein, to defray any other town expenses; to the township treasurers the school fund tax, and to the county treasurer the state and county tax collected by him.¹ The county treasurer shall pay

Clerk to attach warrant.

What the warrant shall require.

Money collected to whom paid.

¹*Form of Collector's Warrant.*

STATE OF ILLINOIS, }
Lake County, } ss.

The people of the State of Illinois, to *Adams Getty*, collector of the town of *Waukegan*, in said county of *Lake*, Greeting:

You are hereby commanded to levy and collect from the several persons named in the roll hereto annexed, and herewith committed to you, the several sums of money mentioned in the last column of said roll, opposite to their respective names; the same being the assessment roll for the tax assessed upon the property in said town the current year. You will proceed to collect the taxes mentioned in said tax list, and for that purpose you will call at least once upon each person taxed, named in said tax list, or at his, her or their place of business, (*if he, she, or they reside in said town,*) and make demand of the taxes charged to him, her or them, upon his, her or their property. And in case any person named in said list shall neglect or refuse to pay the tax imposed on him, or her, you shall levy the same by distress and sale of the goods and chattels of the person who ought to pay the same. And in case any person named in said tax list, upon whom any tax is assessed, shall have removed out of said town, (*or city as the case may be,*) after the assessment was made, into any other town or city in said county, or shall reside in

over to the proper officers the amount of the tax collected by him on the delinquent real estate.

Warrant shall authorize collector to levy and collect by distress.

§ 48. In all cases the warrant shall authorize the collector, in case any person named in such assessment roll shall neglect or refuse to pay his tax, to levy the same by distress and sale of the goods and chattels of such person; and it shall require all payments therein specified to be made by such collector on or before the fifteenth day of February next ensuing.

Clerk shall notify county treasurer before delivery of books to collector.

Before the delivery of the tax books to the collectors, the clerk shall notify the county treasurer that said books are completed, and shall furnish such treasurer with a statement, setting forth the name of each collector, the amount of money to be collected and paid over, for each purpose for which the tax is levied in each of the several towns. The treasurer shall compare said statement with the footings on the tax books.

Assessors to meet and agree on basis of assessment.

§ 49. On the last Saturday in April in each year, the assessors of the several towns shall meet at the office of the county clerk for the purpose of instruction and advice relative to their duties as

any other town or city in said county, you will levy and collect such tax of the goods and chattels of the persons so assessed, in any city or town in said county in which such person shall have removed, or in which he or she shall reside; and in case of such levy of goods and chattels by you, you will give public notice of the time and place of sale, and of the property to be sold, at least six days previous to the sale, by advertisements in writing, to be posted up in at least three public places in said town; and at such time and place, you will, if the same shall not be redeemed by payment of the taxes, sell the same by public auction. If the property thus distrained shall be sold for more than the amount of taxes and your fees, you will return the surplus to the person in whose possession such property was when the distress was made, if no claim shall be made to such surplus by any other person. If any other person shall claim such surplus, on the ground that such property belonged to him, and such claim be admitted by the person for whose tax the same was distrained, you will pay such surplus to such owner. Out of the moneys collected by you by virtue hereof, after deducting the legal fees and charges to which you are entitled, you will pay over as follows, to wit: to the treasurer of the commissioner of highways of said town, the amount of tax collected for the support of highways and bridges, and to the supervisor of the town all other moneys which shall have been collected therein, to defray any other town expenses; to the township treasurer the school fund tax, and to the county treasurer the state and county tax collected by you, all of which payments herein specified you are required to make on or before the fifteenth day of February next.

Hereof fail not to make returns of your doings, by virtue hereof, under the penalties of the law in such case made and provided.

In testimony whereof, I have hereunto set my hand and affixed the seal of the county court, this — day of —, A. D. 18—.

[SEAL.]

JAMES C. BIDDLECOME.

Clerk County Court.

NOTE. There seems to be a difference of opinion as to who is the proper officer for issuing this process. By the township law of 1851, it was given under the hand and seal of the chairman of the board of supervisors, attested by the county clerk and seal of the county court; but by this act, which would repeal so much of the former as conflicts with this, the warrant, as will be seen, is required to be under the hand of the county clerk and seal of the county court. The foregoing form is therefore suggested as being in accordance with this section of the law; yet prudence may dictate that the warrant be signed, as heretofore required, by the chairman of the board of supervisors. See Section 75 of this Act, *post*.

assessors. They then and there shall agree upon a basis upon which the property in the several towns shall be assessed. The county clerk shall consult with and advise said assessors as to the true basis of valuing property; he shall furnish them with such blank circulars, &c., as they may be entitled to, and shall give such instructions and advice as may be necessary to enable them to make their assessments and returns correctly.

§ 50. No assessment of property, or charge for taxes thereon, shall be considered illegal on account of any informality in making the assessment, or in the tax lists, or on account of the assessment not being made or completed within the time required by law.

§ 51. Every county clerk, assessor, collector or other officer who shall in any case refuse or knowingly neglect to perform any duty enjoined on him by this act, or who shall consent to or connive at any evasions of its provisions, whereby any proceeding required by this act shall be prevented or hindered, or whereby any property required to be listed for taxation shall be unlawfully exempted, or the value thereof be entered upon the tax list at less than its true valuation, shall, for every such neglect or refusal, be liable, individually, and on his official bond, for double the amount of the loss or damage caused by such neglect or refusal, to be recovered in an action of debt in any court having jurisdiction of the amount thereof, and may be removed from his office, at the discretion of the court before whom any such judgment shall be rendered.

§ 52. In all cases where any person, company, or corporation has, or may hereafter divide any tract of land into parcels less than the one-sixteenth part of a section, or otherwise, in such manner that such parcels, can not be described in the usual manner of describing lands in accordance with the surveys made by the general government, with a view to sell said lands in such parcel, it shall be lawful for such person, company or corporation, to cause such lands to be surveyed, and a plat thereof made by the surveyor of the county where such lands are situated; which plat shall particularly describe and set forth the lots or parcels of land surveyed, as aforesaid; the lots shall be numbered in progressive numbers, and the plat shall show the number and location of each lot, and the description of the tract of land of which such land is a part, and also the quantity of land in each lot. Said plat shall be certified to by the surveyor, and recorded in like manner as the plats of towns are required to be certified to and recorded. Lands described in any deed or conveyance, or for the purpose of taxation, in accordance with the number and description set forth in the plat aforesaid, shall be deemed a good and valid description of the lot or parcel of land so described.

§ 53. When lands heretofore have been, or may hereafter be, subdivided into parcels less than one sixteenth part of a section, or in such manner that they can not be easily and properly described, without noting the metes and bounds of such tracts, it shall be the

Assessor to cause survey to be made.
Expense how collected.

Proviso.

Where county lines can not be correctly ascertained, duty of board of supervisors.

Survey and plat to be made.

To be forwarded to auditor.

Copy filed in clerk's office.

Proviso, where supervisors of one county refuse to act.

Where tract lies in two counties.

Power of collector to collect whole tax.

duty of the owner or owners thereof, when required so to do by the assessor, to cause the same to be surveyed, and the plat thereof recorded in like manner as is required in the foregoing section; and if such owner or owners shall refuse or neglect to cause such survey to be made within a reasonable time after being notified by the assessor, it shall be the duty of the assessor to cause such survey to be made and recorded; and the expense thereof to be returned by the assessor to the clerk, who shall add the same, together with the commissions for collecting, &c., to the tax assessed on such real property, and it shall be collected with and in like manner as the said tax; and when collected shall be paid on demand to the persons to whom it is due; *provided*, that the collector shall either file a receipt for the payment thereof with the treasurer, or shall pay the same into the county treasury, when he makes settlement for the county revenue, to be paid to the proper persons when called for.

§ 54. In all cases where the boundary lines of any county or counties can not be correctly ascertained from the plats or maps of the original surveys, and such boundary lines not having been surveyed, it shall be the duty of the board of supervisors of the counties bounded by any such lines, jointly, to cause the same to be surveyed and located in accordance with the laws establishing such lines. They shall cause a plat or map to be made, showing the correct location of the line on each equal subdivision or tract of land through which such line may be run; which plat, together with the field notes of such survey, shall be certified to by the surveyor making the survey, under oath, and forwarded to the auditor of public accounts, who shall cause the same to be filed and recorded in his office, and a correct copy thereof forwarded to the clerk of the county court of each of the counties bounded by such line. And said clerk shall cause such copy to be filed in his office, and recorded in a suitable record book, and the line thus surveyed shall be the true division line: *provided*, that if the board of supervisors of any county bounded, in part or in whole, as aforesaid, shall neglect or refuse to comply with the requirements of this section within a reasonable time after being requested to do so by the auditor of public accounts, it shall be the duty of said auditor to cause the said survey to be made, if in his opinion the public interest requires it. And the expenses of making any such survey, whether under the direction of the county authorities or of the auditor, shall be paid by the counties bounded by such lines—one half by each county.

§ 55. For the purpose of taxation, all tracts or parcels of land, not exceeding one sixteenth part of a section, shall be assessed in the county where the greater part of said tract is situated; and the collector of the proper town in said county shall have the same power and authority to collect the taxes due thereon as he would if the whole, of said tract were within the limits of said county. And in all cases where any such tract or tracts shall be equally

divided between two counties, and the owner thereof be a resident of either county, said land shall be assessed in the county in which the owner resides; but if the owner be not a resident in either county, then the auditor shall determine in which county the land shall be assessed: *provided*, that if there be several tracts similarly situated, the auditor shall apportion them equally between the counties, as near as practicable: *provided, furthermore*, that when a tract of land containing a half quarter section, or more, is so divided by the county line that by subdividing it into quarter-quarter section lots, each county will be entitled to the taxes on one or more of said lots, then the tract shall be so divided. The provisions of this section regulating the assessment of land divided by county lines, shall apply to and regulate the assessment of land divided by town lines.

Where such tracts to be assessed.

Proviso

Further proviso.

Town lines.

§ 56. Government lands entered or located prior to the first day of May, A. D. 1853, shall be taxable for the year 1853; lands entered or located prior to the first day of May, A. D. 1854, shall be taxable for the year 1854, and so on annually thereafter. Land sold by the trustees of the Illinois and Michigan canal, shall be taxable from and after the time that full payment therefor is made. School, seminary and saline lands shall be taxable in like manner as the lands sold by the general government. Internal improvement lands sold prior to the first day of June, A. D. 1848, shall be taxable for the year 1853, and annually thereafter.

Locations prior to May, 1853.

Canal lands

§ 57. On the first day of May in each year, or as soon thereafter as practicable, the auditor shall obtain from the several land offices in this state, abstracts of the lands entered and located, and not previously obtained, and shall, when necessary, obtain from the canal office abstracts of the canal lands sold. Upon the receipt of said abstracts, the auditor shall cause them to be transcribed into the tract books in his office, and shall, without delay, cause abstracts of the lands in each county to be made out and forwarded by mail to the county clerks of the several counties; and said clerk shall cause such abstracts to be transcribed into the tract book, and filed in their office.

Auditor to obtain abstracts from land office and transmit same to county clerks.

§ 58. On the last Saturday in April, A. D. 1853, and every two years thereafter, the clerk of the county court shall cause to be delivered to the assessor of each town a book, properly ruled and headed containing a list of the real estate in numerical order, with such blank columns as may be necessary, for the use of the assessor. The clerk, in making out said lists, shall take as his guide the assessment list of the previous year, and the list of subsequent conveyances: *provided*, that the list of lands reported in the annual abstract shall be furnished to the assessor within five days from and after the time such abstract is received from the auditor's office.¹

Clerk to deliver list of real estate to assessor.

Guide of clerk in making list. Proviso.

§ 59. Every person owning or holding real property on the first day of May, including all such property purchased on that

Owners on first of May liable for tax of year.

(1) Amended, see *ante*, p. 59, section 6.

day, shall be liable for the taxes thereon for that year; and if any person shall sell and convey any real property on or prior to the first day of May next after the listing of such real property, he shall, when he lists his personal property for the year next after the listing of said real property, deliver to the assessor a statement setting forth the description of the property sold and conveyed, and the name of the purchaser, and he shall list all real property purchased by him during the said time; and the assessor shall make return thereof to the county clerk, who shall make the proper changes in the tax books. Real property shall in all cases be liable for the taxes thereon.

Clerk to furnish assessor with abstracts of personal property, &c.

§ 60. The clerk of the county court shall annually, on the last Saturday in April, furnish the assessor of each town with a book or books, properly ruled and headed, for the abstract of the assessment of personal property, and shall, at the proper time, furnish such assessor with a list of the real estate that may have become taxable subsequent to the regular assessment of real estate; all property, except real property shall be assessed annually; real property shall be assessed biennially: *provided*, that real property becoming taxable after the regular assessment of real property, or that may have been omitted, shall be assessed for the current year at the same time that the personal property is assessed in the year that the real property is not regularly assessed, and such property shall be re-assessed the next succeeding year, with the regular assessment of real property.

Proviso

Auditor to furnish forms and instructions.

§ 61. It shall be the duty of the auditor of public accounts to make out and forward to the clerk of the county court of the several counties, for the use of such clerks and other officers, suitable forms and instructions for carrying this act into effect; and all such instructions shall be strictly complied with by the officers in the performance of their respective duties, as required by this act. He shall give his opinion and advice on all questions of doubt, as to the true intent and meaning of the provisions of this act.

Assessor to enter on list, lands omitted by clerk.

§ 62. If the assessor should discover any real property subject to taxation, which has not been returned to him by the clerk, he shall assess such property, and enter the same on the assessment list. And if upon the return of such list to the clerk, it shall appear that any such real property has not been returned by the auditor, it shall be the duty of the clerk to advise the auditor of the facts, describing the property so returned by the assessor; and the auditor shall ascertain the true condition of such real property, and advise the said clerk thereof, who shall correct the records in his office, in accordance with the facts in the case.

Clerk to advise auditor of omitted lands.

Clerk to compare lists with files before delivery to assessor.

§ 63. It shall be the duty of the clerk, before delivering the list of real property to the assessor, to cause such list to be carefully compared with the lists of taxable property on file in his office, and if it shall appear that any such property was omitted in the former assessment list, he shall correct the list designed for the

assessor, so that said list may contain a full and complete abstract of all the taxable real property in the several towns.

OF THE MANNER IN WHICH TAXES ARE TO BE COLLECTED, AND
THE DUTIES OF THE TOWN COLLECTORS.

§ 64. Every collector, upon receiving the tax list and warrant, shall proceed to collect the taxes therein mentioned, and for that purpose shall call at least once on the person taxed, or at his or her place of residence, if in the town or district for which such collector has been chosen, and shall demand payment of the taxes charged to him on his property.

Collector to call on each person to collect tax.

In case of Refusal to Pay.

§ 65. In case any person shall refuse of [or] neglect to pay the tax imposed on him, the collector shall levy the same by distress and sale of the goods and chattels of the person who ought to pay the same.

To collect by distress in case of refusal to pay tax.

NOTICE.

§ 66. The collector shall give public notice of the time and place of sale, and of the property to be sold, at least six days previous to the sale, by advertisement, to be posted up in at least three public places in the town where such sale is to be made. The sale shall be by public auction.

Notice of sale.

SURPLUS.

§ 67. If the property distrained shall be sold for more than the amount of the taxes, the surplus shall be returned to the person in whose possession such property was when the distress was made, if no claim be made to such surplus by any other person. If any other person shall claim such surplus, on the ground that the property sold belonged to him, and such claim be admitted by the person for whose tax the same was distrained, the surplus shall be paid to such owner.

To whom surplus money returned in cases of distress

§ 68. In case any person upon whom any tax shall be assessed under the provisions of this act, in any city or town of this state, shall have removed out of such city or town after such assessment, and before such tax which now is or hereafter may be assessed, in any district of any city or in any town, upon the estate of such person situated out of the city or town where he may reside, and within the county, it shall be lawful in either of those cases for the collector of said city or town to levy and collect such tax of the goods and chattels of the person assessed, in any district within said cities, or within any town within said county to which such person shall have removed, or in which he shall reside.

In case of owner's removal, collector may pursue and collect anywhere in the county.

§ 69. Every collector shall pay over, within one week after the time mentioned in his warrant for paying the moneys directed to be paid to the town officers of his town and to the county treasurer,

Collector to pay over to treasurer and town officers money

collected, and
take duplicate re-
ceipts

the sums required in such warrant to be paid to them respectively, first retaining the compensation to which he may be legally entitled. The town officers to whom any such moneys shall be paid, shall deliver to the collector duplicate receipts therefor, one of which shall be filed by the collector with the county treasurer, for the amount therein stated to have been received, and no other evidence of such payment shall be received by the county treasurer.¹

Where taxes ex-
ceed town char-
ges.
Surplus paid to
supervisor.

§ 70. Whenever any greater amount of taxes shall be assessed in any town than the town charges thereof, and its proportion of the tax and county charges, the surplus shall be paid by the collector to the supervisor of the town, who shall hold the same until wanted by the town to pay any town expenses.

Part of tax may
be received.
Proviso.

§ 71. The collectors shall receive on the part of any lot, piece, or parcel of land, charged with taxes: *provided*, the persons paying such tax shall furnish a particular specification of the part, and if the tax on the remainder of such lot or parcel of land shall remain unpaid, the collector shall enter such specification in his return to the county treasurer, to the end that the part on which the tax remains unpaid may be clearly known.

Undivided shares
of property.

§ 72. If any part on which the tax shall be so paid be an undivided share, then the person paying the same shall state to the collector who is the owner of such share, then it may be excepted in case of a sale for the tax on the remainder; and the collector shall enter the name of such owner on his account of arrears of taxes.

When collector
unable to collect.

§ 73. If the town collector shall be unable to collect any tax charged in the tax list, by reason of the removal or insolvency of the person to whom such tax shall be charged, or on account of any error in the tax list, he shall deliver to the county treasurer his tax books, and shall make out and file with the said treasurer, at the time of his settlement, a statement in writing, setting forth the name of the person charged with such tax, the value of the property, and the amount of tax so charged, and the cause of delinquency, and shall make oath before the county treasurer, or some justice of the peace, that the facts stated in such statement are true and correct; that the sums mentioned therein remain unpaid, and that he has used due diligence to collect the same; which oath or affidavit shall be signed by the town collector. And upon the filing of said statement, the county treasurer shall allow the town collector credit for the amount of taxes therein stated, and shall apportion and credit the same on the several funds for which such tax was charged; and when he makes settlement with the board of supervisors, such statement shall be sufficient voucher to entitle him to credit for the amount therein stated; but in no case shall any town collector or county treasurer be entitled to abatements on the

Shall file state-
ment of delin-
quent taxes and
make oath as to
same.

Treasurer shall
allow credit for
uncollected tax.

(1) When it becomes necessary for the collector to levy upon and sell the goods and chattels of any person for the collection of taxes, it will be lawful for him to sell the same at any time before the time he is required to pay over the money to the county treasurer, and other officers mentioned in his warrant, having made a levy on or previous to the fifteenth of February.—*Shelden v. Van Buskirk*, 2 Comstock, 473.

resident tax list, until the statement and affidavit aforesaid is filed, as required by this act.¹

§ 74. If any person chosen or appointed to the office of collector of any town, district or city in this state shall refuse to serve, or shall die, resign or move out of the town, district or city, or the office becomes vacated in any other way, before he shall have entered upon or completed the duties of his office, or shall in any way be disabled from completing the same, the supervisor and justices of such town or district, or any two of them, shall forthwith appoint a collector for the remainder of the year, who shall give the like security, and be subject to the like penalties, and have the same powers and compensation as the collector in whose place he was appointed, and the supervisor or town clerk shall forthwith give notice of such appointment to the county treasurer. But such appointment shall not exonerate the former collector or his sureties from any liability incurred by him or them.

Refusal of collector to serve.

Vacancy filled by appointment.

Former collector not exonerated.

§ 75. If a warrant shall have been issued as by law provided, prior to any appointment under the last section, the original warrant, if the same can be obtained, shall be delivered to the collector so appointed, and shall be considered as giving him the same powers as if originally issued to him. But if such warrant can not be obtained, a new one shall be made out by the clerk of the board of supervisors of the county and shall be signed by the chairman of the board of supervisors in the same way and manner as the original was, which shall be directed to the collector so appointed, and upon every such appointment, the supervisor of the town or district, if he shall think it necessary, may extend the time limited for the collection of taxes, for a period not exceeding thirty days; of which extension he shall forthwith give notice to the county treasurer. The collector so appointed shall keep an account of all collections made by the former collector, so far as he can ascertain the same, and when any one shall present a receipt for taxes paid to the former collector, he shall mark against the amount of taxes so paid, to whom paid, and the time when paid.

Warrants issued prior to appointment of successor delivered over.

New warrant made out where former can not be obtained.

Accounts of new collector how kept.

Neglect of Collector to Pay over Money.

§ 76. If any collector shall refuse or neglect to pay to the several town officers of his town, or to the county treasurer, the sums required by his warrant to be paid to them respectively, or either of them, or to account for the same as unpaid, the county treasurer shall, within twenty days after the time when such payments ought to have been made, issue a warrant, under his hand and seal, directed to the sheriff of the county, commanding him to levy such sums as shall remain unpaid and unaccounted for by such collector, of the goods and chattels, lands and tenements of such collector, and to pay the same to the county treasurer, and to return

Refusal of collector to pay over.

County treasurer to issue warrant against property of collector.

(1) This provision requiring the oath of the collector to be made before the county treasurer or some justice of the peace, must be strictly complied with; where such oath is made before the clerk of the county court, it will invalidate all of the proceedings and of course the sale for taxes.—*Hough v. Hastings*, 18 Ill., 312.

Exception.

such warrant within forty days after the date thereof; which warrant the county treasurer shall immediately deliver to the sheriff of the county. But no such warrant shall be issued by the county treasurer, for the collection of moneys payable to town officers, of the refusal or neglect of the collector to pay the same, or account therefor, as above provided.

Duty of Sheriff.

Sheriff to execute
warrant and
make return.

§ 77. The sheriff to whom such warrant is directed shall immediately cause the same to be executed, and shall make return thereof to the county treasurer, within the time specified, and shall pay to him the money received by virtue thereof, deducting from his fees the same compensation that the collector would have been entitled to retain. Such part of the moneys, if any, as ought to have been paid by the collector to the town officers, shall be paid by the county treasurer to the officers to whom the collector was directed to pay the same; but if the whole amount of moneys due from the collector shall not be collected in such warrant, the county treasurer shall first retain the amount which ought to have been paid by him, before making any payment to the town officers.

In case the Whole or Part of Money is Paid.

If part is collect-
ed, duty of sher-
iff.

§ 78. If the whole sum due from the said collector shall be collected, the sheriff shall so state in his return, but if part only, or if no part of such sum shall be collected, the sheriff shall note in his return the fact, and the amount collected, and shall also certify that such collector has no goods or chattels, lands or tenements, in his county, from which the money, or residue thereof, as the case may be, could be levied, and in either case the county treasurer shall forthwith give notice to the supervisor of the town or district of the amount due from such collector.

Bond to be Sued.

Supervisor to sue
on collector's
bond.

§ 79. The supervisor shall forthwith cause the bond of such collector to be put in suit, and shall be entitled to recover thereon the sum due from such collector, with costs of suit, and the money recovered shall be applied and paid in the same manner in which it was the duty of the collector to have applied and paid the same.

Where sheriff
neglects duty in
returning war-
rant or paying
over money,
treasurer to pro-
ceed against him.

§ 80. If any sheriff shall neglect to return any such warrant, or to pay the money levied thereon, within the time limited for the return of said warrant, or shall make any other return than such as is above mentioned, the county treasurer shall forthwith proceed to collect the whole sum directed to be levied by such warrant, and he may proceed in the first instance by a writ of attachment against the goods and chattels, lands and tenements, rights and credits of such sheriff, and the same proceeding may be had thereon, in the proper court, as is now provided by law in ordinary cases of attachment.

Failure of county
treasurer to col-
lect.

§ 81. In case the county treasurer shall fail to collect such moneys by attachment or suit, as is provided for in the next pre-

ceding section hereof, he shall prosecute suit on the official bond of such sheriff for the amount aforesaid.

§ 82. The town collectors shall be entitled to three per cent. on all moneys collected by them, as their compensation. Collector's per centage.

§ 83. This act shall apply to and be in force in all counties adopting the act to provide for township organization, and take effect from and after its passage. To what counties act applicable.

Approved February 12, 1853.

An Act to amend the Assessment and Revenue Laws.

In force February 14, 1855.

THE ASSESSMENT OF PROPERTY AND THE COLLECTION OF TAXES
IN COUNTIES ADOPTING THE TOWNSHIP ORGANIZATION LAW.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the act entitled "An act for the assessment of property and the collection of taxes in counties adopting the township organization law," approved February 12, 1853, be and the same is hereby so amended that wherever the word assessor or assessors occurs in said act, it shall be held to mean "town assessor," or "town assessors," as the case may be. Word "assessor" means town assessor.

§ 2. The return of the schedule or list of taxable property belonging to any railroad company or companies required to be made by this act, shall be made to the county clerk, instead of the assessor; and the clerk shall lay the same before the board of supervisors when they meet to equalize the assessment of property. If a majority of said board are satisfied that such return is correct they shall assess it accordingly; but if they believe that such schedule or list does not contain a full and fair statement of the property of such company subject to taxation in said county, made out and valued in accordance with the requirements of law, said board shall assess such property, or cause it to be assessed, in accordance with the rules prescribed for assessing such property. The schedule or list referred to in this section shall be delivered at the office of the county clerk of the proper county, on or before the first day of May in the year in which such property is required to be assessed; and if such schedule or list be not so delivered within the time specified in this section, it shall be the duty of the county clerk to obtain, as near as practicable, a correct list of the property of such company, with the valuation thereof, in each town or district in his county; which list shall be laid before the board; and said board shall take action thereon in like manner as if the return had been made by the company, and shall allow the clerk such compensation as may be right and proper for his services and expenses in obtaining such list. All property, whether owned by individuals or corporations, shall be listed with reference to the quantity on hand and owned on the first day of April instead of May: *provided*, that government or other lands not previously listed shall be returned, and be subject to taxation in accordance with the fifty-sixth section of the act mentioned in the first section of this act. Assessment of railroad property; schedule to be laid before supervisors. Where schedule is not fair, supervisors may assess the property. Schedule when to be delivered to county clerk. Property listed by quantity first of April. Proviso

Penalty where
company refuses
to list.

§ 3. Every company required to make return as aforesaid, that shall refuse or neglect to deliver to the clerk of the proper county, or to his deputy, within the time specified in the foregoing section, a correct list of their taxable property in such county, made out in accordance with the requirements of the laws of this state, shall be liable to the penalty imposed by the eighth section of the act referred to in the first section of this act.

Schedule of rail-
road company,
what shall set
forth.

§ 4. The schedule or list of the taxable property of railroad companies shall set forth a description of all the real property owned or occupied by the company in each county, town and city through which such railroad may run, and the actual value of each lot or parcel of land, including the improvements thereon, except the track or superstructure of said road, shall be annexed to the description of such lot or parcel of land. Said list shall set forth the number of acres taken for right of way, stations or other purposes, from each tract of land through which said road may run, describing said land, as near as practicable, in accordance with the surveys of the United States, giving the width of the strip or parcel of land, and its length through each tract; also, the whole number of acres and the aggregate value thereof in said county, town and city. All of the property mentioned in this section shall be denominated real property. The list aforesaid shall set forth the

Shall set forth
land for right of
way and other
purposes.

length of the main track, and the length of all side tracks and turnouts in each county, city and town through which the road may run, with the actual value of the same, and the value of the improvements at each of the several stations when said stations are not a part of city or town lots. The said stations and track shall be denominated "fixed and stationary personal property."

All is real prop-
erty.

Shall set forth
length of track.

What is fixed
property.

Inventory of
rolling stock,
and value.

The list shall contain an inventory of the rolling stock belonging to said company with the value thereof; said rolling stock shall be denominated personal property; also, a statement of the value of all other personal property owned by said company in each county, city and town. The length of the whole of the main track within this state, and the total value of the rolling stock, shall be set forth in said list. The rolling stock shall be listed and taxed in the several counties, towns and cities, *pro rata*, in proportion as the length of the main track in such county, town or city bears to the whole length of the road. All other property shall be listed and taxed in the county, town or city where the same is located or used. The description of all lands owned by any railroad company, for right of way or station purposes, other than those which

Rolling stock,
where taxed.

Other property,
where taxed.

Lands other than
in lots, shall be
entered by as-
sessor.

How bounded.

are a part of laid off town, city or village, shall be entered by the assessor on his books, as being a strip or tract of land extending on each side of the said railroad track, and embracing the same, commencing at the point where the said railroad track crosses the boundary line of said county, city or town, and extending to the point where the said track crosses the boundary line of said county, city or town, or to the point of its termination in the same, as the case may be, containing — acres, more or less, (inserting name of county, city or town, boundary line of the same and number of

acres,) and when advertised by any sheriff or collector, to be sold for taxes, or when so sold, no other description shall be necessary. If any clerk or assessor, as aforesaid, shall change the valuation of property as aforesaid, or any of the same, that shall be returned by any railroad company, he shall give notice of such change, as provided for in section nine of "an act for the assessment of property and the collection of taxes in counties adopting the township organization law," approved February 12, 1853. If valuation changed, notice to be given.

§ 5. The county clerk shall furnish at the expense of the county, suitable blanks for the use of the assessors, and is hereby authorized and required to assess and enter on the list for taxation any and all property, whether real or personal, that may have been omitted in the regular assessment list; and if any such omissions be not discovered in time to be entered on the tax list of the proper year, he shall add the amount of tax due thereon to the tax of the following year. The list of taxable real estate required to be furnished for the use of the assessors shall be made out from the collector's book, instead of the assessment list, and the town collectors shall deposit the tax lists or books furnished them by the county clerk, with the county treasurer, at the time of their settlement with said treasurer; and said treasurer shall, within two months thereafter, deliver said tax books to the county clerk, who shall deposit them in his office, to be kept as part of the records of said office. County clerk to furnish blanks.
Clerk to enter property omitted.
List of real estate, what made out from.
Books to be delivered.

§ 6. Each assessor shall at the time of taking a list of the personal property, in the year or years in which the real property is not required to be listed, also take a list of all real property situate in his town that shall have become subject to taxation since the last previous listing of property therein with the value thereof, and of all new buildings or other structures of any kind, the value of which shall not have been previously added to or included in the valuation of the real property on which such structures have been erected, and shall make return thereof to the county clerk at the same time he makes return of the personal property; in which return he shall set forth a description of the real property on which each of such structures shall have been erected, the kind of structures so erected, and the true value added to such parcel of real property by the erection thereof; and the additional sum which it is believed the land on which the structure is erected would sell for at private sale in consequence thereof, shall be considered the value of such new structure; and in case of the destruction by fire, flood or otherwise, of any building or structure of any kind which shall have been erected previous to the last valuation of the land or lot on which the same shall have stood, or the value of which shall have been added to any former valuation of such land or lot, the assessor shall determine, as near as practicable, how much less such property would sell for at private sale in consequence of such destruction, and make return thereof to the county clerk, as in this section provided. In all such cases the clerk shall add to the former valuation of such property the amount of the Duty of assessor to add property subsequently becoming taxable, and make return thereof.
What return shall set forth.
Clerk to add former value.

Proviso.

Subdivision of
lots and blocks.

additional value, and deduct from the former valuation the amount of decreased value, in accordance with the return made as aforesaid: *provided*, that the board of supervisors shall have power to equalize or correct any such returns. If any tract or parcel of land shall be subdivided into town or city lots, or blocks after the previous assessment thereof, it shall be the duty of the assessor, at the time of taking a list of the personal property as aforesaid, to assess and return the value of such lots or blocks in like manner as if the land had not been assessed; and the clerk shall correct the tax list accordingly. Section forty-nine of the act mentioned in the first section of this act is hereby repealed, provided that the town assessors shall call at the clerk's office for the lists, blanks, &c.

REGULATING THE COLLECTION OF THE REVENUE IN COUNTIES ADOPTING THE TOWNSHIP ORGANIZATION LAW.

Bond by whom
approved.

§ 7. The act entitled "An act regulating the collection of the revenue in counties adopting the township organization law," approved February 12, 1853, be so amended that the judge of the county court, county clerk, and chairman of the board of supervisors, shall have power to approve of the bond required by the third section of said act, in like manner as the board of supervisors have power to approve of such bonds; which bond shall be executed before the first day of December in each and every year: *provided*, that any such bond executed after the time specified in this section shall not be void in consequence of not having been executed within the time aforesaid. But in no case shall the county treasurer act as collector, or receive any state revenue until after he shall have executed and filed the bond required by the aforesaid third section.

Proviso.

Advertising delinquent lands.

§ 8. The collector may advertise the list of delinquent lands and town or city lots upon which any taxes remain due and unpaid on the second Monday in March, at any time thereafter.

Sale for 1854.

§ 9. The lands and lots delinquent for taxes of the year 1854, or for any previous year or years, shall be sold on the second Monday in May, 1855: *provided*, that if for any cause judgment thereon shall not be obtained at the May term of the county court, judgment may be had at any regular term of the county court thereafter and the sale shall be on the Monday next after the first day of the term at which judgment is obtained; which sale may be continued from day to day, as is now provided for by law.

Proviso.

When delinquent
lands shall be
sold for taxes.

§ 10. All lands and town or city lots upon which the taxes shall remain unpaid on the second Monday of March next, after such taxes become due, shall be considered delinquent; and all such lands and lots shall be sold on the second Monday of May next after they become delinquent, or as soon thereafter as practicable. Sections fifteen, sixteen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four and twenty-five of the act mentioned in the seventh section of this act, and all other acts or parts of acts conflicting with this act, are hereby repealed: *pro*

Sections repealed.

Proviso.

vided, that so much of the aforesaid sections and laws as requires fifty per cent. and costs to be charged and collected on the tax of the year 1853, remaining unpaid, shall remain in full force.

§ 11. The fees allowed by law for making out the list of real estate for the use of the assessors shall be paid out of the county treasury; and the board of supervisors shall allow the clerk such reasonable compensation as may be right and just for his services in making out and recording the abstract required to be made out and recorded by the tenth section of the act mentioned in the seventh section of this act, and for making list of delinquent lands and lots sold for taxes, for the auditor's office, and for making settlement with the county collector, and for making certified statement of said settlement for the use of the auditor's office; all of which shall be paid out of the county treasury.

Fees how paid.

Compensation to be allowed to clerk by supervisors.

§ 20. So much of the several acts mentioned in this act, as requires a list of the non-resident property to be made separate from the resident property for the use of the county treasurer or county collector, be and the same is hereby repealed, and hereafter the clerk shall include all the taxable property, whether owned by residents or non-residents, in the tax lists furnished the town collectors. All real property returned by the town collectors to the county collector as delinquent, shall be considered non-resident property, and the county collector shall proceed to collect the taxes due thereon, by sale or otherwise, as provided for by law. Town collectors shall make out and deliver to the county collector, at the time of their settlement, a list of all the delinquent property aforesaid, which list shall contain a true description of said property, the name of the person to whom listed, the amount of taxes charged on each parcel of property, and such other facts relative thereto as may be set forth in the list furnished him.

List of non-resident property not required.

All delinquent lands considered non-resident.

§ 22. In counties that have adopted township organization, the tax on property owned by railroad companies shall not be charged on the tax books made for the use of the town collectors, but a certified statement of such tax and property shall be delivered to the county collector, and said collector shall collect the amount of tax due from such company or companies, and pay the same over to the state treasurer and other persons authorized to receive it, in like manner as taxes due on non-resident property are required to be collected and paid over by him. If any such company shall neglect or refuse to pay any tax due by them, as provided for by law, and the collector can not find property in his county belonging to said company sufficient to make the amount of tax due as aforesaid he may, and it shall be his duty to prosecute suit therefor in any court having jurisdiction thereof in this state. That in cases where judgment has heretofore or may hereafter be rendered for taxes due on real estate, and from any case [cause] whatever the collector failed to offer the property for sale at the time required

County collector to collect tax on railroad property.

If unable to collect to prosecute suit.

Time for tax sales extended.

by law, said collector may offer said property, or so much thereof as may be necessary to pay taxes and costs remaining unpaid at the time of sale, at any subsequent time, by giving notice of the time and place of said sale, which notice shall be published in like manner, and for the length of time that notices for judgments and sale of such property are required to be published; and in cases of appeals in suits for delinquent taxes, when the judgment is affirmed, sale may be made at any time after the affirmation of such judgment, by giving notice as aforesaid. The fees for publishing notice as aforesaid shall be charged and collected as other costs.

In case of appeals. of appeals in suits for delinquent taxes, when the judgment is affirmed, sale may be made at any time after the affirmation of such judgment, by giving notice as aforesaid. The fees for publishing notice as aforesaid shall be charged and collected as other costs.

Fee for publishing how collected. such judgment, by giving notice as aforesaid. The fees for publishing notice as aforesaid shall be charged and collected as other costs.

§ 23. This act shall take effect and be in force from and after its passage.

Approved February 14, 1855.

In force June 23, 1852.

An Act declaring certain Lands exempt from Taxation.

Rule of assessment.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That assessors are hereby required to take into consideration the diminution in value of lands occasioned by any public road, railroad, canal or its feeders, embankments, or earth dug or thrown therefrom, in estimating the value of the same, and that the owners of lands thus occupied or incumbered shall only be required to pay taxes on the same, deducting the loss occasioned by said incumbrances.

§ 2. This act to be in force from and after its passage.

Approved June 23, 1852.

In force February 21, 1859.

An Act to amend the Revenue Laws.

Former act amended.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the seventh section of the act entitled "An act for the assessment of property and the collection of taxes in counties adopting the township organization law," and the seventh section of "An act for the assessment of property," approved February 12th 1853, be and the same are hereby so amended, that the quantity in acres, of wheat, corn and all other field productions, shall be ascertained and set forth by the assessor, in columns prepared for that purpose, to wit: the number of acres of wheat shall be placed in one column; the number of acres of corn shall be placed in one column; and the number of acres of all other field productions shall be placed together in one column in like manner as the quantity of other personal property is required to be set forth, except that the value thereof shall not be estimated or set forth.

Assessor to gather statistics of crops.

Auditor to give instructions.

§ 2. The auditor, in preparing the forms of assessor's books, for the year 1860, and thereafter, shall give the necessary instructions for carrying this act into effect.

Approved February 21, 1859.

An Act in relation to the Assessment of the Property of Railroad Companies for taxation, in counties adopting the Township Organization Law. In force February 21, 1861.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That whenever the schedule or list of taxable property belonging to any railroad company shall be filed with the county clerk of any county adopting the township organization law, and the valuation of the property described in such schedule as fixed by said schedule, shall be increased by the board of supervisors of such county, then an appeal may be taken by such company from such order of the board of supervisors to the circuit court of said county, by filing bond with the clerk of the county court of said county in double the sum assessed by said board on the property of said company, within thirty days after the said assessment shall have been increased by said board of supervisors. Said bond shall be executed to the people of the state of Illinois, for the use of the people of said county, with good and sufficient security, and shall contain the provisions now required by law in cases of appeal from justice of the peace to the circuit court. List of property filed with county clerk.

§ 2. All appeals taken under the provisions of this act shall be set by the clerk of said circuit court for the second day of the term to which appeal may be taken, and shall be tried by the court or a jury as other cases of appeal under existing laws of this state. Appeal by railroad company.

§ 3. The payment of the tax of such railroad company, according to the list and valuation filed by it, shall not be in any manner delayed by the taking of such appeal. Trial of appeals.

§ 4. Any resident tax payer of said county, feeling aggrieved by the assessment of said board, shall have the right to appeal from such assessment to the circuit court of said county, by filing good and sufficient bond with the clerk of said county court, within thirty days after such assessment shall have been increased or acquiesced in by said board, in a sum sufficient to cover all costs that may accrue in consequence of such appeal; which bond shall be made payable to said railroad company, and shall contain all the provisions now required in appeal bonds under the laws of this state. Payment of tax.

§ 5. This act shall take effect and be in force from and after its passage. Resident tax payer's appeal.

Approved February 21, 1861.

An Act to provide for the interest on the State Debt.

In force January 1, 1862.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That it shall be the duty of the auditor of public accounts to assess, annually, upon the taxable property of this state, in addition to all other taxes, a sum sufficient and no more, with the interest fund, if any, in the state treasury, to pay the interest upon the state debt, upon which Auditor's annual assessment.

interest is legally payable; which said sum shall be assessed and collected in the same manner as other state revenue is or may be assessed and collected; said assessment not to exceed one and a half mills on each dollar of taxable property.

§ 2. The fund thus collected shall be kept separate and shall be denominated the interest fund, and shall be applied to the payment of interest upon the state debt, and for no other purpose whatsoever.

§ 4. This act to take effect and be in force from and after the first day of January, A. D. 1862.

Approved February 22, 1861.

In force Feb. 15,
1851.
Assessments
legalized.

An Act to legalize Assessments heretofore and hereafter to be made.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That where any county or township assessor has heretofore failed, or shall hereafter fail to complete or finish his assessment in the time required by law, such failure shall not vitiate such assessment, but the same shall be as legal and valid as if the same had been completed in the time required by law: *provided*, that this act shall not release any such assessor of any county or township from any liability imposed by law for the non-fulfillment of his duty.

This act to take effect and be in force from and after its passage.

Approved February 15, 1851.

In force April 24, 1861. An Act to relieve the People of this State from the payment of exorbitant and unnecessary Taxes.

Preamble.

WHEREAS, out of the entire two-mill tax collected for the last two years, under the provisions of the 15th article of the constitution of this state, less than three per cent. has been called for by the creditors of the state entitled to receive the same; and whereas all of the indebtedness thus presented has been paid in full, and the other bondholders entitled to receive *pro rata* payments on their bonds, in accordance with the terms prescribed by the said 15th art. of the constitution, have wholly declined and refused and do still decline and refuse to receive any portion of the said two-mill tax fund; and whereas the convention that framed the constitution declared that the said 15th art. contemplates a consent on the part of our bondholders to receive the said funds, when collected, as indispensable to the assessment and collection of the same; and whereas our present financial condition requires that provision shall be made for an increase in the revenue fund, while a just regard for the interests of our state and the prosperity of her people imperatively demands that such provision shall be made, without increasing, but on the contrary, if possible, by diminishing our present heavy rate of taxation; therefore,

Two-mill tax

State tax for two
years one-half
mill.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That there shall be assessed

and collected, in the same manner as other State taxes are assessed and collected, one-half of one mill upon each dollar's worth of taxable property in this State, for the year 1861, and also for the year 1862; and the assessment and collection of all other state taxes, except the school tax, for the above mentioned years is hereby suspended. Other taxes suspended.

§ 2. All funds now in the state treasury and belonging to the state, except the interest fund and the school fund, and the Central railroad fund, shall be loaned and transferred by the state treasurer, upon the auditor's warrant, to be drawn for that purpose, to the revenue fund; and all funds hereafter received into the state treasury and belonging to the state, except the said interest fund and the said school fund, and said Central railroad fund, shall be paid into the said revenue fund; and said funds shall be subject to be drawn therefrom upon auditor's warrants issued for the payment of appropriations made by law. Funds in State treasury carried over to revenue fund. Funds collected to be paid into revenue fund.

§ 3. It shall be the duty of the state treasurer to transfer from the revenue fund, or any other funds in the state treasury, to the interest fund, at such time or times as may be necessary, upon the auditor's warrant, to be drawn for that purpose, a sum sufficient to make up any deficiency in said interest fund, and to provide fully for the payment of the interest on the state debt, as the same regularly becomes due; and it shall not be lawful for the said state treasurer to allow the said revenue fund to be reduced at any time, by the payments of auditor's warrants drawn thereon, below an amount sufficient for the purpose of making ample provision for any deficiencies which may exist in the said interest fund as aforesaid. Interest fund provided for.

§ 2. This act to be in force from and after its passage.

Approved February 8, 1861.

COLLECTION.

An Act regulating the Collection of the Revenue in Counties adopting the Township Organization Law. In force February 12, 1853.

SECTION 1. *Be it enacted by the people of the state of Illinois, represented in the General Assembly,* That the county revenue shall be collected in gold and silver coin, county orders and jury certificates, and in no other currency; the revenue for state purposes shall be collected in gold and silver coin, and auditor's warrants, and in no other currency; and state taxes, levied for any special purpose, other than to defray the ordinary expenses of the state government, shall be collected in gold and silver coin, and in no other currency. What funds shall be received for taxes.

§ 2. The treasurer of each county shall be the county collector, and his refusal to qualify and act as such shall vacate his office of treasurer, which shall be filled as in other cases of vacancy. Treasurer to be county collector

§ 3. Said collector shall, at the September meeting of the board of supervisors, annually, and before he enters upon the duties of County collector to give bond annually.

Condition of bond securities. his office as collector, execute a bond, in addition to his bond as treasurer, in a penalty of at least double the amount of the state taxes to be collected in the year next thereafter, with two or more securities, who shall be residents of the said county, and owners of real estate equal in value to the amount specified in the bond; which amount shall be determined, and which bond shall be approved by the board of supervisors, and shall be witnessed by at least one witness who can write his name, and be substantially in the following form, to wit:¹

Form of bond. "Know all men by these presents, that we, A. B., collector, and C. D. and E. F., securities, all of the county of _____, and state of Illinois, are held and firmly bound to the people of the state of Illinois in the penal sum of _____ dollars, for the payment of which, well and truly to be made, we bind ourselves, each of us, our heirs, executors and administrators, firmly by these presents. Signed with our hands and sealed with our seals, this — day of —, 18—.

"The condition of the foregoing bond is such, that if the above bound A. B. shall perform all the duties required to be performed [by] him as collector of the taxes for the year 18—, in the time and manner prescribed by law, and when he shall be succeeded in office, shall surrender and deliver over to his successor in office all books, papers and moneys belonging to said county, or to the state and appertaining to his said office, then the foregoing bond to be void, otherwise to remain in full force.

A. B. [L. S.]
C. D. [L. S.]
E. F. [L. S.]

"Signed, sealed and delivered in presence of me, G. H."

Shall take oath. He shall also take and subscribe an oath, to be endorsed on the back of the bond, before some person authorized to administer oaths that he will faithfully, diligently, and impartially, to the best of his judgment and ability, perform all the duties required of him by law as such collector.²

Bond not void for informality in assessment. § 4. Bonds given in pursuance of this act shall not be considered void, nor shall any security be released from any liability thereon, in consequence of any informality in the assessment, or in making out the assessment lists, nor of any change or alteration in the law made by the general assembly, although the same may be made after the execution of said bond.

Bond approved and entered on record of board of supervisors. § 5. The collector's bond shall be approved by the board of

(1) Amended; see act for assessment of property and collection of revenue, approved Feb. 14, 1855, sec. 7, *ante*, page 178.

(2) *Guyer v. Andrews*, 11 Ills., 494. *People v. Smith*, 12 Id., 281. *Comphor v. People*, Id., 290.

Form of Oath of County Collector, to be endorsed on back of Bond.

STATE OF ILLINOIS, } ss.
Fulton County, }

I, A. B., county collector of the county of *Fulton*, in the state of Illinois, do solemnly swear that I will faithfully, diligently and impartially, to the best of my judgment and ability, perform all the duties required of me by law as such collector.

A. B.

Subscribed and sworn before me, }
this — day of —, 18—. }

C. D., Justice of the Peace.

supervisors, and shall be correctly copied and entered on the records of said board, and forthwith mailed to the auditor of public accounts, with the certificate of the clerk, under the seal of his office, showing that said bond has been duly approved and recorded. Said bond, when approved and recorded, shall be a lien against the real estate of such collector, until he shall have complied with the conditions thereof.

§ 6. On the first Monday of November, annually, or as soon thereafter as the collector shall be qualified, the clerk shall deliver the tax lists or books containing the non-resident tax list, to said collector, and shall take from him duplicate receipts, setting forth the amount of state, county and special tax charged for said year, one of which shall be forwarded to and filed in the office of the auditor of public accounts, and the other in the office of the county clerk. All taxes shall be considered due from and after the time the tax books are required to be delivered to the collector.

Non-resident list, when to be delivered to collector.

Duplicate receipts.

Taxes when due.

§ 7 The clerk shall compute the amount of taxes due on each tract or parcel of land, on each town lot or block, and on each person's personal property, placing the amount of such tax in the proper columns opposite the value thereof, in all cases rejecting the fractions of cents, and shall add up the figures showing the amount of such tax, in the proper columns, and the aggregate amount on each column shall be noted on each page. Said clerk shall test the accuracy of such additions, by computing the amount of tax on the aggregate value of property on each page, that he may be certain that the tax has been correctly extended and added.

Clerk to compute taxes due on each tract.

Accuracy to be tested.

§ 8. In all cases when any real property has heretofore been, or may hereafter be forfeited to the state for taxes, it shall be the duty of the clerk, when he is making up the amount of the tax due on such real property for the current year, to add the amount of back tax and fees remaining due on such real property, with ten per cent. interest thereon, to the tax of the current year, and the aggregate amount so added together shall be collected in like manner as the tax on other real property for that year may be collected.

Back tax added with interest thereon.

§ 9. The clerk shall annually make out for the use of the town collector, correct lists of the property assessed to residents, which lists shall set forth in alphabetical order, the names of the persons owing tax on personal property in each collector's district, the aggregate value of such property assessed to each person, and the amount of tax due thereon, and such other facts as may be required by the forms and instructions provided for by this act; he shall make out the abstracts of real property in numerical order, which shall show the name of the person to whom each tract or lot is assessed, the value of each tract or lot, and the amount of taxes thereon; which list shall be made out in strict conformity with the forms and instructions furnished by the auditor. He shall also make out in like manner, for the use of the county collector, abstracts of the real property listed as non-resident property.

Clerk to make out resident tax list for collector.

List how made out.

Abstract for county collector.

When lists are completed, clerk to make abstract showing aggregate value of property.

§ 10. When the books or lists for the collector are completed, the clerk shall make out a complete abstract, showing the aggregate number and value of each kind of personal property enumerated in the assessment list; the value of unenumerated articles; the value of goods and merchandise; the value of property listed by bankers, brokers and stock-jobbers; the value of property listed by manufacturers; the value of moneys and credits; the value of moneys invested in bonds, stocks, joint stock companies, &c.; the value of property listed by banks; the value of lands, and the value of town and city lots; the amount of state tax due thereon, and the rate of taxation for county and other special purposes. The value of property assessed to non-residents, and the amount of tax thereon, shall be stated separately from the non-resident tax.

Correctness to be certified.

The correctness of said abstract shall be certified to by the clerk, with the seal of his office attached, and forwarded to the auditor's office by mail. A true copy of said abstract shall be entered on the records of said court. If any clerk shall knowingly make a false or incorrect abstract of the value of taxable property, he shall be deemed guilty of perjury, and punished accordingly.

Copy entered on record.

Penalty.

County collector on receipt of list to collect.

§ 11. The collector of each county, upon receiving the assessment list of the non-resident property from the clerk of the county court, and giving a receipt for the same, shall collect the taxes charged upon said lists from the persons owing the same, and he shall give such persons receipts therefor.

County collector to report to clerk delinquent list and list of errors

§ 12. On or before the third Monday in April, annually, the collector shall make out and file with the county clerk a statement in writing, setting forth the value of property, and the amount of tax thereon, in each town that has been returned to him by the town collectors as delinquent, and also a list of the errors in the non-resident list, showing a description of the property and the amount of the tax charged in error, and the cause of the error; the truth of said statement and list shall be verified by the oath of such collector. At the April meeting of the board of supervisors

Verified by oath.

Abatements to be allowed.

he shall settle with and allow the collector credit for such abatements as he may be legally entitled to, and the clerk shall certify the value of the property upon which the taxes are so abated, and the amount of the state tax charged thereon, to the auditor of public accounts, who shall allow the collector credit for the amount so certified: *provided*, that if the auditor shall have reason to believe that the amount stated in said certificate is not correct, or that the allowance was illegally made, he shall return the same for correction. If there be no meeting in April, the clerk shall certify the value of property and the amount of the state tax charged on the list of abatements filed by the collector, to the auditor, who shall allow the collector credit for the same, subject to the future action of the board, and said board shall examine and act upon the said list at their first term thereafter, and their action shall be certified by the clerk to the auditor, who shall adjust the account of the collector, as provided for in this act.

Proviso.

Clerk to certify abatements to auditor.

§ 13. The county courts of the several counties in this state shall have original jurisdiction of suits for taxes due on real property, whether such courts be sitting for the transaction of county or probate business. Jurisdiction of county courts in suit for taxes.

§ 14. Personal property shall be liable for taxes levied on real property, and real property shall be liable for taxes levied on personal property, but the tax on personal property shall not be charged against real property, except in cases of removals, or where said tax can not be made out of the personal property. Property liable for taxes levied.

§ 15. If the taxes on any town or city lot or lots shall remain unpaid on the third Monday in April next after said taxes become due, the collector shall advertise, obtain judgment and sell such lots in like manner as is provided for by this act for advertising, obtaining judgment and selling non-resident and delinquent lands. And if any such lots be forfeited to the state, as is provided for in the case of delinquent lands, the clerk shall certify to the auditor the amount of state tax charged on the lots so forfeited, and the auditor shall allow the collector credit therefor, and charge the same to the collector for the following year. The board of supervisors shall allow the collector credit for the amount of taxes charged for county, town and other special purposes, on the lots forfeited to the state, including the printer's fee thereon. Town and city lots shall be sold annually, in the month of May next after the taxes become due, or as soon thereafter as practicable.* Town lots when advertised and how sold for taxes. es. Lots forfeited to State. Credit allowed collector for forfeited lots. Time of sale.

§ 16. If the taxes on any tract or parcel of land, other than town or city lots, shall remain unpaid on the first day of May next after such taxes become due, said collector shall make out and file with the clerk of the county court a true and correct list of the said lands, setting forth the name of the owner, or person in whose name the said property is taxed, a description of the property, the value of each tract or parcel, and the amount of taxes charged thereon, together with the aggregate value and amount of tax due on such list; and he shall attach to and file with said list an affidavit, which shall be in the following form, to-wit: List of lands. Affidavit.

"I, A. B., collector in and for the county of —, do solemnly swear that the list to which this affidavit is attached, is true and correct, and that the taxes thereon, as set forth in said list, are unpaid, and that I have used due diligence to collect said taxes, and that the aggregate amount therein stated, remains due and unpaid, as I verily believe." Form of affidavit.

Said list shall be examined by the county clerk, and all errors therein corrected; and the collector shall be allowed credit in his settlement for the amount of county tax, including road, school, and other special county tax due thereon. The clerk of the county court shall within ten days after filing of said list, make out a true and correct copy thereof in manner and form as may be required by the auditor of public accounts, and shall forward the same to said auditor, to be filed in his office.*

* (1) Sections 15, 16, 18, 19, 20, 21, 22, 23, 24, and 25 of this act are repealed. See act for assessment of property and collection of revenue, approved February 14, 1855, sec. 10, ante page 178.

Clerk's duty.

§ 17. The clerk of the county court shall make out and deliver to the collector, on or before the fifteenth day of May annually, the statement, certificates and lists appertaining to the settlement of the accounts of such collector, which statement, certificates and lists, shall be made out in proper form, under seal of said court, securely enveloped and sealed. The collector shall deliver the package received from the clerk as aforesaid, at the office of the auditor, and make a final settlement of his accounts, and pay the amount due the state into the state treasury, on or before the first day of June next after receiving the tax books. At the time of making the settlement, the clerk shall deliver to the collector a memorandum showing the net amount collected, as per said settlement; and if any clerk shall neglect or refuse to make out and deliver the statements, certificates and lists as required by this act, on demand of the collector, he shall be liable for all damages sustained by such collector, or his securities, by reason of such neglect or refusal.

Collector to settle.

Forfeiture.

Auditor's duty on neglect of collector.

§ 18. If any collector shall refuse, fail or neglect to make settlement and pay the full amount due from him to the state, into the state treasury, as is or may hereafter be required by law, it shall be the duty of the auditor of public accounts, and he is hereby authorized and required to issue a warrant, under his hand and seal of office, directed to the sheriff of the proper county, (if there be no sheriff, then to the coroner, and if there be no sheriff or coroner, then to some suitable person appointed by said auditor as especial agent for that purpose,) commanding him to levy and collect such sums as shall remain due from such collector, and pay the same into the state treasury as required by law. Said auditor shall attach to every such warrant a correct statement of the account of such collector, as charged on the books in his said office. The warrant aforesaid shall have the same force and effect as executions issued by the circuit courts.*

Warrant to be executed.

§ 19. The officer or agent to whom such warrant shall be directed shall immediately cause the same to be executed, and the money collected out of the goods and chattels, lands and tenements of such collector, and make return of such warrant to the said auditor, and pay the amount collected, after deducting his commissions and fees into the state treasury within forty days from the issuing of such warrant: *provided*, that if any warrant issued by the auditor shall be lost or destroyed, the auditor shall issue a duplicate warrant, bearing date at the time of issuing the same. The officer or agent collecting money on any warrant issued as aforesaid, shall be allowed the same commissions and mileage that would have been allowed to the collector had he paid over the funds as required by law, and such fees as is allowed by law to sheriffs for serving executions, advertising property, &c., which fees shall be charged and collected in like manner as fees on executions are charged and collected.*

Fees and commissions.

Proviso.

Indorse facts.

§ 20. The coroner or agent to whom any warrant shall be issued in pursuance of this act, shall indorse thereon the facts in the case, and if it shall appear that the whole or any part of the

sum due remains unpaid, and that the collector has no goods and chattels, lands or tenements in his county, out of which to make the amount remaining due, or any part thereof, the auditor shall cause suit to be commenced on the bond of such collector, at the first term of the supreme court held at the seat of government, or of the Sangamon county circuit court, thereafter.*

§ 21. In all cases where special agents are appointed, as provided for in the foregoing sections, the auditor shall require such agents to file with the clerk of the county court of the proper county a bond, with one or more securities, to be approved by the county judge, in a penal sum of at least double the amount to be collected and made payable to the people of the state of Illinois, and conditioned for the faithful performance of the duties required of him by this act. And if any sheriff or coroner shall neglect or refuse to comply with the requirements of this act, he shall be liable, on his official bond, for all damages caused by such refusal or neglect, and if any sheriff or coroner shall knowingly make a false return on any warrant issued by the auditor as aforesaid, he shall be deemed guilty of perjury, and shall be punished accordingly. Agents appointed to execute any warrant issued by the auditor, as provided for by this act, who may file bond and accept such appointment shall be entitled to like compensation, and shall be liable to like penalties as the sheriff or coroner. And if any sheriff, coroner or agent shall collect moneys due the state, and fail or neglect to pay the same into the state treasury as required by law, he shall pay for the use of the state, ten per cent. per month damages, from the time he should have paid over said money until paid: *provided*, that in case of sickness, or other reasonable excuse, to be verified by the oath of the person so failing to pay, and the payment being made within a reasonable time, the auditor may remit such damages. But if such coroner or agent shall apply or use any funds collected by him and belonging to the state, for his own benefit, or the benefit of any other person, or in any other way or manner than is provided for by law, such coroner or agent shall be deemed guilty of embezzlement, and on conviction thereof shall be punished accordingly.*

§ 22. The auditor of public accounts shall file the list of delinquent lands upon which the taxes remain due and unpaid, and shall add to the amount of tax charged on each tract ten cents, to be collected and paid into the state treasury. Any person desiring to pay the taxes due on said lands may pay the same into the state treasury at any time before the first day of August next after the said taxes become due. If the taxes on any such lands shall remain due and unpaid after the first day of August aforesaid, the auditor shall add fifty per cent. on the amount of taxes due on each tract to said taxes, and the aggregate thereof shall be charged and collected. Any person may redeem said lands by paying the amount charged as aforesaid into the state treasury, at any time before the first day of November thereafter.*

§ 23. On the first day of November, annually, or as soon there-

* Repealed.

Bond to be sued.

Agent to give bond.

Penalty.

Not to use funds.

Penalty.

Duty of auditor concerning delinquent list.

Auditor to transmit list to clerk.

after as practicable, the auditor of public accounts shall make out and transmit by mail to the clerk of the county court, to be filed in the office of said clerk, a correct list of all lands which had been returned as delinquent and upon which the taxes remained unpaid on the first day of November.*

Duty of county treasurer.

§ 24. The collector shall add fifty per cent. on the taxes remaining due at the time of filing the list with the clerk and—for which he may be allowed to credit—to the tax charged on each tract of land, and the aggregate thereof shall be collected and paid over to the state and county, according to the rate of taxation for that year. Any person desiring to redeem or pay the taxes on such lands in the county after the first day of May, may do so by paying the amount charged as above set forth to the collector, at any time before the first day of November thereafter. When said collector shall receive the tax on any tract of land or town lot, subsequent to the first day of May aforesaid, he shall set forth the amount so received opposite the tract or lot so redeemed, in a column provided for that purpose, and shall note the day of such payment opposite such tract or lot on the list of delinquent lands and lots aforesaid, and shall file said lists with the clerk on or before the first day of November aforesaid.*

Tax received noted.

List to be compared.

§ 25. The clerk shall carefully compare the delinquent list returned by the auditor with the list returned by the collector, and if there be any lands or lots upon which the taxes have not been paid he shall add the amount due thereon to the tax due on such lands and lots for the next succeeding year, and shall make out a true and correct list of such lands and lots, which shall be delivered to the collector with the tax books of the current year, or as soon thereafter as practicable; and the said collector shall collect the taxes thereon by sale of otherwise.*

Collect by sale.

Delinquent lands and town lots to be advertised for sale, in a newspaper.

§ 26. When any person owning lands or town lots in any county in this state, shall fail to pay the taxes assessed thereon, as provided for in the foregoing sections, it shall be the duty of the collector to publish an advertisement in some newspaper published in his county, if any such there be, and if there be no such paper printed in his county, then in the nearest newspaper in this state, which advertisement shall be once published at least four weeks previous to the term of the county court at which judgment is prayed; and said advertisement shall contain a list of the delinquent lands upon which the taxes remain due and unpaid, the names of owners, if known, the amount due thereon, and the years for which the same are due; and shall give notice that he will apply to the county court, at the ——— term thereof, for judgment against said lands for said taxes, interest and cost, and for an order to sell said lands for the satisfaction thereof; and shall also give notice, that on the first Monday next succeeding the day fixed by law for the commencement of the said county court, all the lands for sale of which an order shall be made, will be exposed to public sale at the place of holding court in said county, for the amount of taxes, interest and cost due thereon; and the advertisement

What advertisement shall contain.

Notice of application for judgment.

Notice of time of sale.

published according to the provisions of this section shall be deemed and taken to be sufficient and legal notice both of the intended application of the collector to the county court for judgment, and also of the sale of lands under the order of said court: *provided*, that if the publisher of such paper shall be unable or unwilling to publish said list and notice accurately and proper, the collector shall select some other newspaper, having due regard to the circulation of such paper.

Shall be deemed legal notice.

Provide: other papers may be selected.

§ 27. Hereafter no purchaser of any land or town lot, at any sale of lands or town lots for taxes due, either to the state or any county or incorporated town or city within the same, or at any sale for taxes or levies authorized by the laws of this state, shall be entitled to a deed for the lands or town lots so purchased, until he or she shall have complied with the following conditions, to wit: such purchaser shall serve or cause to be served a written notice of such purchase on every person in possession of such land or town lot, at least three months before the expiration of the time of redemption on such sale; in which notice he shall state when he purchased the land or town lot, the description of the land or lot he has purchased, and when the time of redemption will expire. In like manner he shall serve on the person or persons in whose name or names such land or lot is taxed, a similar written notice, if such person or persons shall reside in the county where such land or lot shall be situated; and in the event that the person or persons in whose name or names the land or lot is taxed do not reside in the county, such purchaser shall publish such notice in some newspaper printed in such county, and if no newspaper is printed in the county, then in the nearest newspaper that is published in this state to the county in which such lot or land is situated; which notice shall be inserted three times, the last time not less than three months before the time of redemption shall expire.¹ Every such purchaser, by himself or agent, shall, before he shall be entitled to a deed, make an affidavit of his having complied with the conditions of this section, stating particularly the facts relied on as such compliance;² which affidavit shall be delivered to the person

Constitutional provisions.

Deed not given until conditions complied with.

Purchaser to serve notice.

What the notice shall state.

Shall likewise serve written notice.

Notice when published in newspaper.

Notice inserted three times.

Purchaser or agent to make affidavit, to obtain deed.

Affidavit to be filed.

¹ *Form of Notice to be given by Purchaser at Tax Sale, to entitle him to a deed.*

To John Jones, or whom it may concern:

You are hereby notified that at a sale of lands for state and county taxes, (state for what taxes) made in pursuance of law in the county of Lake, and state of Illinois, on the — day of —, A. D. 18—, I purchased the following described lands, (or town lots as the case may be; here describe the lands) and that the time of the redemption thereof, from said sale will expire on the — day of —, A. D. 18—.

F. KELLY.

Dated at Waukegan, Illinois, this —, day of, &c.

² *Form of Affidavit to be made by Purchaser at Tax Sale before entitled to deed.*

STATE OF ILLINOIS, } ss.
Lake county,

F. Kelly, being duly sworn, doth depose and say: that at a sale of lands

Affidavit *prima facie* evidence of notice.

Punishment for perjury.

Printers' fees, and expenses how recovered.

Proviso: rate of fees for publication.

In case of death of collector, clerk to take books.

Proviso.

authorized by law to execute such tax deed, and which shall by him be filed with the officer having custody of the record of the lands and lots sold for taxes and entries of redemption in the county where such lands and lots shall lie, to be by such officer entered on the records of his office, and carefully preserved among the files of his office, and which record or affidavit shall be *prima facie* evidence that such notice has been given.¹ Any person swearing falsely in such affidavit shall be deemed guilty of perjury, and punished accordingly. In case any person shall be compelled under this section to publish a notice in a newspaper, then, before any person who may have a right to redeem such lands or lots from such tax sale, shall be permitted to redeem, he or she shall pay the officer or person who by law is authorized to receive such redemption money, the printer's fee for publishing such notice and the expenses of making and filing the affidavit: *provided*, that the fee for such publication, where the notice does not include more than four tracts or lots, shall not exceed one dollar; and when the notice contains more than four tracts or lots, then the printer shall be allowed twenty cents for each additional tract, and five cents for each additional town lot contained in such notice.²

§ 28. In case of the death of any collector during the time the tax books are in his hands, and before the time specified in this act for making settlements, the clerk of the county court shall demand and take charge of the tax books, and shall appoint one or more competent persons to examine said tax books, and it shall be the duty of the persons so appointed to ascertain the amount remaining uncollected, and make out a correct abstract of the same: *provided*, that should there be but a small portion of the taxes

(or town lots as the case may be) made in the county aforesaid, at the place of holding court therein, on the — day of —, A. D. 18—, for state and county taxes, (or, as the case may be,) he purchased the following described tract of land: (here describe the land) that he did, on the — day of —, A. D. 18—, cause a written notice of such purchase to be served upon A. B., then in possession of such land, and that the following is a copy of such notice: (here insert copy of notice) that John Jones, in whose name said land was assessed, does not reside in said county of Lake, nor did not at the time of serving such notice; that this deponent thereupon caused such notice to be published in the "*Chronicle and Advocate*," a newspaper printed in the said county of Lake, which said notice was published three times in said paper; the first insertion being on the — day of —, A. D. 18—, and the last on the — day of —, A. D. 18—; that he relies upon the foregoing facts; as compliance with the law entitling him to a deed of said parcel of land.

F. KELLY.

Subscribed and sworn to before me, }
this — day of —, 18—.

H. P. NELSON, Justice of the Peace.

(1) The sheriff is the proper officer to execute tax deeds. See act upon this subject, *post* p. 300.

(2) The following cases are referred to on the subject of tax titles; *Canet v. Wiggins*, 1 *Scan.*, 355. *Choteau v. Jones*, 11 *Ills.*, 300. *Frye v. Bank of Illinois*, *Id.*, 367. *Irving v. Brownell*, *Id.*, 402. *Curry v. Hinman*, *Id.*, 420. *Scaritt v. Chapman*, *Id.*, 443. *Spellman v. Curteneue*, 11 *Ills.*, 409. *Chestnut v. Marsh*, *Id.*, 173. *Voris v. Thomas*, *Id.*, 442. *Pitkin v. Yaw*, 13 *Ills.*, 251. *Elakely v. Bestor*, *Id.*, 257. *Merritt v. Thompson*, *Id.*, 716.

collected at the time of the death of the collector, then the amount actually collected shall be ascertained, and the same books used in completing the collections.

§ 29. In case of a vacancy, as mentioned in the foregoing section, the board of supervisors may appoint a suitable person to complete the collections, who shall execute a bond, collect and pay over the taxes in the same manner, and his acts shall be as binding and effectual as the collector's would have been had he completed the collections; and the collector so appointed may obtain judgment at any regular term of the county court, and sell delinquent lands and lots in like manner as the collector would have been authorized to do had he completed such collections: *provided*, that if the collector had advertised the delinquent land list before his death, it shall not be necessary for his successor, or the person appointed to complete the collections, to advertise, but he shall proceed to finish the collections in the same manner as the collector would have been authorized to do had he lived.

Vacancy by death of collector, how filled.

Proviso.

§ 30. All suits or applications for judgment, and order of sale for taxes on delinquent lands and town lots shall be made at regular terms of the county court, and the sale shall be made at the time specified in the notice, whether the court remain in session or not. If for any cause the court shall not be holden at the term at which judgment is prayed, the cause shall stand continued, and it shall not be necessary to re-advertise the list or notice required by law to be advertised before judgment and sale; but at the next regular term thereafter the court shall hear and determine the matter, and if judgment is rendered, the sale shall be made at the same time and in like manner as it would have been made if the suit had been commenced at that term.

Judgment and order of sale for taxes shall be at regular terms of court.

In case of continuance, judgment at next term.

§ 31. The printer publishing the list of delinquent lands and town lots, shall transmit by mail, or other safe conveyance, to the collector four copies of the paper containing said list. Upon the receipt of said paper, and on demand being made, the collector shall pay to the printer the amount of the fees allowed by law for publishing said lists and notice; and it shall be his duty to file one copy of said paper in his office, and deliver one copy to the clerk of the county court, and one to the auditor of public accounts, and one copy to the state treasurer, who shall file and safely preserve them in their respective offices: *provided*, that if said publication is not made in accordance with the requirements of the law, or the papers above mentioned are not furnished the collector before the first day of the term of the court at which judgment is prayed, the collector shall not pay said fees until they are collected by him.

Printer to send copies of paper to collector.

Collector to pay printer's fees.

Papers to be filed.

Proviso: payment of fees delayed.

§ 32. If any collector shall refuse or neglect to pay the amount due the printer, as required by this act, it shall be competent for the printer to collect the same in an action of debt against such collector.

Printer may sue for fees.

§ 33. The collector shall file the list of delinquent lands and town lots, which shall be made out in numerical order, and contain

Collector file list of delinquent

lands for judgment.

List to be recorded.

Form of record of delinquent list.

all the information necessary to be recorded, with the clerk of the county court, at least five days before the commencement of the term at which application for judgment is to [be] made, and said clerk shall receive and record the same in a book to be kept for that purpose; which said book shall be ruled and headed as near as may be in the following form :

A list of lands and town lots reported by ———, collector of the revenue for the year 18—, upon which he has been unable to collect the taxes due thereon, and now, on this — day of —, 18—, files this his petition, for a judgment and order of sale against said lands and lots at the — term, 18—, of the county court.

OWNER'S NAME.	Part of Section.	Section.	Township.	Range.	Acres.	Valuation.	State Tax.	County Tax.	Costs.	Total Amount due.

Clerk to make record of lands against which judgment is rendered.

What record shall set forth.

Record attested, to constitute process.

Clerk to enter lots sold.

To enter redemption.

Book how ruled.

The clerk of the county court shall, before the day of sale, make a correct record of the lands and town lots against which judgment is rendered in any suit for taxes due thereon, and which shall set forth the name of the owner if known, the description of the property, and the amount due on each tract or lot, in the same order as said property may be set forth in the judgment book, and shall attach thereto a correct copy of the order of the court, and his certificate of the truth of such record; which record, so attested, shall hereafter constitute the process on which all real property shall be sold for taxes, as well as the sales of such property. When any tract of land or town lot shall be sold, it shall be the duty of the clerk to enter on the record aforesaid the quantity sold, and the name of the purchaser, opposite such tract or lot, in the blank columns provided for that purpose, and when any such property shall be redeemed from sale, the clerk shall enter the name of the person redeeming, the date and amount of redemption, in the proper columns. Said book shall be so ruled that there shall be suitable blank columns for entering the quantity or portion of each tract or lot that may be sold, the name of the purchaser, and such other columns as may be deemed necessary.

§ 34. On the first day of the term at which judgment on delin-

quent lands and town lots is prayed, it shall be the duty of the collector to report to the clerk a list of all the lands or town lots, as the case may be, upon which taxes have been paid, if any, from the filing of the list mentioned in the foregoing section up to that time; and the clerk shall note the fact opposite each tract upon which taxes have been paid. The collector, assisted by the clerk, shall compare and correct said list, and shall make and subscribe an affidavit, which shall be, as near as may be, in the following form:

Collector to report to clerk subsequent payments of taxes.

Affidavit of collector.

"I, ———, collector of the county of ———, do solemnly swear (or affirm, as the case may be,) that the foregoing is a true and correct record of the delinquent lands and town lots within the county of ———, upon which I have been unable to collect the taxes as required by law for the year or years therein set forth; that said taxes now remain due and unpaid, as I verily believe."

Form of affidavit of collector.

Said affidavit shall be entered on the record at the bottom of the list, and signed by the collector; the oath may be administered by the judge, clerk, or any justice of the peace, who shall attest the same.¹

Affidavit entered on list.

§ 35. The court shall examine said list, and if defence or objection be offered by any person interested in any of said lands or lots to the entry of judgment against the same, the court shall hear and determine the matter in a summary manner, without pleadings, and shall pronounce judgment as the right of the case may be, and shall direct the clerk to make out and enter an order for the sale of such real property, which shall be substantially in the following form:

Court to examine list and hear parties in summary way; and give judgment.

"Whereas, due notice has been given of the intended application for a judgment against said lands, and no owner hath appeared to make defence or show cause why judgment should not be entered against the said lands for the taxes, interest and cost due and unpaid thereon for the year or years herein set forth, therefore it is considered by the court that judgment be and is hereby entered against the aforesaid tract or tracts of land, or parts of tracts, (as the case may be,) in favor of the state of Illinois, for the sum annexed to each tract or parcel of land, being the amount of taxes, interest and costs due severally thereon; and it is ordered by the court that the said several tracts of land, or so much thereof as shall be sufficient of each of them to satisfy the amount of taxes, interest and costs annexed to them severally, be sold as the law directs."²

Form of order of sale for taxes.

§ 36. Said order shall be signed by the judge, and shall have the same effect as judgments and orders made by the circuit court. Persons aggrieved by any decision of the county court in such cases, shall have the right of appeal to the circuit court, by giving bond and security, payable to the people of the State of Illinois, as required in cases of appeals.

Judge to sign order of sale.

§ 37. The clerk of said court shall, within five days after any sale for taxes, make out and deliver to the collector a transcript of sales for taxes, which shall be written on foolscap paper, made up and stitched in book form, suitable for binding. Said collector

Clerk to make and deliver to collector transcript of sale.

(1) *Taylor v. The People*, 2 *Gilm.*, 349.

(2) *Rigg v. Cook*, 4 *Gilm.*, 336. *Olcott v. The State*, 5 *Gilm.*, 481.

shall deliver said transcript to the auditor at the time he is required to make settlement for the state tax.

Lands forfeited to state for want of bidders.

§ 38. Every tract of land or town lot offered at public sale for the taxes due thereon, and not sold for want of bidders, shall be and the same is hereby declared to be forfeited to the state of Illinois.

Clerk to certify lands forfeited to state.

§ 39. If any lands or town lots shall be forfeited to the state for taxes, it shall be the duty of the clerk of the county court to certify to the auditor of public accounts the assessed value thereof, and the amount of tax charged thereon; and the auditor shall credit the collector with the amount of state tax due on said property, and the board of supervisors shall allow him credit for the printer's fees and county tax thereon.

Auditor to credit collector.

Forfeited lands how redeemed.

§ 40. If any person shall desire to redeem any tract of land or town lot forfeited to the state, he shall apply to the clerk of the county court, who shall issue his order to the collector, directing him to receive from such person the amount due on said tract or lot, particularly describing the property and setting forth the amount due, including the printer's fee; and upon presentation of said order to the collector he shall receive said amount, and give the person duplicate receipts therefor, setting forth a proper description of the property and the amount received, one of which shall be countersigned by the clerk, and when so countersigned shall be evidence of the redemption of the property therein described; but no such receipt shall be valid until it is countersigned by the clerk. The other receipt shall be filed by the clerk in his office, and said clerk shall cancel the sale of the property so redeemed on the books in his office, and charge the amount of the redemption money to the collector.

Sale to be canceled.

Clerk to report amount due state on forfeited property.

§ 41. It shall be the duty of the clerk of the county court, annually, when he makes return of the amount of taxes levied, to report the amount due the state on such forfeited property, to the auditor of public accounts, who shall charge the same to the collector: *provided*, that if the collector who received said redemption money shall be succeeded in office, he shall pay the amount in his hands over to his successor, who shall pay said amount into the state treasury when he settles for the taxes of the current year.

Proviso.

Amount due first of November to be added to tax of current year.

§ 42. The amount due on lands and lots, and remaining unpaid on the first day of November, shall be added to the tax of the current year, and the amount thereof shall be reported against the collector with the amount of assessment for said year; said collector shall collect and pay over the said amount in like manner as other taxes, and he is hereby authorized to advertise and sell said property in the same manner as if said property had never been forfeited to the state. Said additions and sales shall be continued from year to year until the taxes on said property is paid by sale or otherwise: *provided*, that at the regular sale in the year 1855, and every five years thereafter, all the property previously forfeited and remaining unredeemed, shall be sold to the highest bidder,

Collector to collect and pay over amount as other taxes and to advertise and sell.

Proviso: sale of forfeited property.

but not for a greater sum than is due thereon, including costs, &c., and the former sales of such property as will not sell shall be canceled: *provided*, that if any person shall offer to pay the taxes, interests and costs due on forfeited property for a less quantity than the whole tract or lot, then such property shall be sold to the person offering to pay the amount due thereon, for the least quantity or part thereof.

§ 43. Real property sold under the provisions of this act may be redeemed at any time before the expiration of two years from the date of sale, by the payment in specie, to the clerk of the county court of the proper county, of double the amount for which the same was sold, and all taxes accruing after such sale, with ten per cent. interest thereon from the day of sale, unless such subsequent tax has been paid by the person for whose benefit the redemption is made; which fact may be shown by the collector's receipt: *provided*, that if the real property of any minor heir, *feme covert* or lunatic, be sold for taxes, the same may be redeemed at any time within one year after such disability be removed, upon the terms specified in this section, which redemption may be made by their guardians or legal representatives.

Proviso.

Real property may be redeemed in two years. Redemption how made.

Proviso as to minors and others.

§ 44. The securities on any bond given in pursuance of this act, or either of them, may at any time after the execution of said bond, if they, or either of them, have good reason to believe that the officer in said bond is about to fail to comply with the conditions thereof, file with the clerk of the county court a notice in writing, verified by the person asking to be discharged, setting forth the facts in the case, and asking to be released from any further liability on said bond; whereupon the clerk with whom such notice shall be filed, shall notify the said officer to give additional security, equal to the security about to be approved by the board of supervisors, which notice may be served by the said clerk, or by any person appointed by them, or either of them. If the officer so notified shall not appear and give additional security within two days from the time he may be so notified, the board of supervisors may remove him from office, and in all such cases said board shall appoint some suitable person to fill the vacancy occasioned by such removal, who shall execute bond, qualify and perform the duties required as such officer: *provided*, that if the securities on any collector's bond, or either of them, shall be satisfied that such collector is making improper use of the funds collected by him, or has absconded or is about to abscond, from this state, whereby said securities may become liable to pay any sum or sums of money, it shall be lawful for said security to sue out a writ of attachment against the goods and chattels of such collector, in like manner as he would be authorized to do if said collector was personally indebted to such security, and the money collected on any such attachment shall be paid into the treasury by the officer collecting the same, in like manner as if paid over by the collector.

Securities on official bonds, how may be released.

Additional security required.

Removal from office.

Proviso.

When securities may proceed by writ of attachment against principal.

§ 45. If any real property shall be double assessed, or assessed

Erroneous taxes may be refunded.

- before it become taxable, and the taxes so erroneously assessed shall have been paid, the board of supervisors on application of the person paying the same or his agent, and being satisfied of the facts in the case, shall cause said taxes to be refunded *pro rata* by the state and county; and if any collector shall receive the taxes properly due on any real property and shall afterwards sell such property for said taxes, he shall refund to the purchaser thereof, if application be made within two years from the date of said sale, double the amount of purchase money. Any collector neglecting or refusing to pay as required by this section, shall be liable to the county in an action of debt, in any court having jurisdiction of the amount of said debt: *provided*, that the county and the state shall refund, in case of erroneous sales heretofore made, as provided for by the laws in force at the time of such sales.
- Penalty for refusal to refund. § 46. If any collector shall have paid, or may hereafter pay into the state treasury, any greater sum or sums of money than is or may be legally and justly due from such collector, after deducting abatements and commissions, the auditor shall issue his warrant for the amount so overpaid, which shall be paid out of the fund or funds so overpaid, on the warrant of the auditor.
- Proviso. § 47. The board of supervisors shall have power to levy a tax in their respective counties for county purposes, but shall in no case exceed the amount of four mills on each dollars' worth of taxable property, unless specially authorized by law; ¹ and said county tax shall be levied at the September meeting of said board, or as soon thereafter as practicable, and collected with the state revenue.
- Over payments by collector refunded. The same lien created to secure the state tax, and the provisions made for the collection thereof, shall also exist and apply to the county revenue.
- County tax levied by board of supervisors. § 48. Suits commenced by the auditor, as provided for in this act, shall not abate for the want of service on one or more of the defendants, but judgment may be rendered against such of said defendants as may have been legally notified: *provided*, that suits may be prosecuted against the defendants not included in said judgment at any subsequent term of said court: *provided further*, that the provisions of this section shall not be so construed as to change the conditions of any bond executed prior to the passage of this act on suits in favor of the state, and against collectors or other persons indebted to the state. The state shall pay like fees as are or may be allowed by law in suits between individuals, and in all cases when the state is plaintiff she shall advance and pay such fees, in like manner as individuals are required to advance and pay fees. And when the state becomes the purchaser of real property sold on execution for any debt due the said state, the officer selling such real estate shall be entitled to like commissions as he would have been entitled to had such property been purchased by individuals. Said fees and commissions to be paid on the warrant of the auditor out of any money in the treasury not otherwise appropriated; and when such fees are col-
- County taxes to be lien.
- Suits not to abate for want of service on all defendants.
- Proviso.
- Proviso; condition of bonds not changed.
- State to pay fees.
- Commissions to officers allowed by state.
How paid.

(1) Amended, increased to five mills. See *ante*, p. 62, sec. 27.

lected they shall be paid into the state treasury. So much of this section as relates to fees shall apply to suits heretofore prosecuted, as well as to suits that may hereafter be commenced and prosecuted. Suits heretofore.

§ 49. The assessment shall be a lien on the personal property of all persons owing taxes from and after the time the assessment books are received by the collector, for the state and county tax due thereon, and no sale or transfer of such property shall effect the claim of the state or county, but the said property may be seized by the collector wherever found, and removed, if necessary, and sold to discharge the taxes of the person owning the same at the time of such assessment, together with the costs and charges of collection. Assessment a lien on personal property. Subsequent sale not to affect lien.

§ 50. Whenever the taxes on the same property shall have been paid more than once, for the same year, by different claimants, the collector shall make a return to the clerk of the county court of all such surplus taxes so received by him, together with the names of the several claimants thus paying; and the clerk shall make a record of all such cases, and transmit a copy thereof to the auditor of public accounts, who shall charge such collector with the portion of such surplus taxes belonging to the state; but such surplus tax shall in no case be refunded. Taxes paid more than once, collector to make return thereof. Clerk to return to auditor.

§ 51. Whenever any person shall pay the taxes charged against him, the collector shall enter such payment in his list, and give the person paying the same a receipt, specifying the name of the person for whom paid, the amount paid, what year paid for, and the property on which the same was assessed, according to its description on the assessment list. Payment to be entered on list. Collector to give receipt.

§ 52. The collector shall attend at the court house in his county on the day specified in the notice for the sale of real estate for taxes and then and there, between the hours of ten o'clock in the forenoon and six o'clock in the afternoon, proceed to offer for sale, separately, each tract of land or town lot in the said list on which the taxes and costs have [not] been paid. Collector to attend sale and offer lands for sale.

§ 53. The person at such sale offering to pay the taxes and costs charged on each tract or lot, for the least quantity thereof, shall be the purchaser of such quantity, which shall be taken from the east side of such tract or lot. Sale to list for smallest quantity.

§ 54. The collector shall continue such sale from day to day, until all the tracts of land or town lots contained in the delinquent list on which taxes and costs remain unpaid, shall be sold or offered for sale. Sale continued from day to day.

§ 55. The person purchasing any tract of land or town lot, or any part thereof, shall forthwith pay to the collector the amount of taxes and costs charged on said tract or lot, and on failure so to do, the said land or lot shall be again offered for sale in the same manner as if no such sale had been made; and in no case shall the sale be closed until payment is made. Purchaser to pay amount bid. Failure to pay, lands re-offered.

§ 56. The collector shall obtain a copy of the advertisement of the delinquent lands and lots, together with a certificate of the Advertisement and certificate of

publisher to be filed.

due publication thereof, from the printer or publisher of the newspaper in which the same shall have been published, and shall file the same with the clerk of the county court, on or before the first day of the term at which judgment is prayed.

Letters and figures used in descriptions.

§ 57. In all advertisements for the sale of lands for taxes, and in entries required to be made by the clerk of the court, or other officer, letters and figures may be used, as they have heretofore been used, to denote townships, ranges, sections, part of sections, the year for which the taxes were due, and the amount of taxes, interest and costs.

Clerk to give certificate of purchase.
Countersigned by collector.

§ 58. The clerk shall make out and deliver to the purchaser of any lands or lots sold for the payment of taxes as aforesaid, a certificate of purchase, to be countersigned by the collector, describing the land or lot sold as the same was described in the delinquent list, the amount of taxes and costs for which the same was sold, and that payment has been made therefor. If any person shall become the purchaser of more than one tract of land or lot, he may have the whole included in one certificate.

One certificate for several tracts.

Certificates assignable by indorsement.

§ 59. Such certificate of purchase shall be assignable by indorsement, and an assignment thereof shall vest in the assignee, or his legal representatives, all the right and title of the original purchaser.

Sale not affected by wrong name of owner.

§ 60. No sale of real estate for taxes shall be considered invalid on account of the same having been charged in any other name than that of the rightful owner, if the said real estate be in other respects sufficiently described, and the taxes thereon were due and unpaid at the time of such sale.

Clerk's books evidence of sale.

§ 61. The books and records belonging to the office of the clerk of the county court, or copies thereof, certified by said clerk, shall be deemed sufficient evidence to prove the sale of any land for taxes the redemption of the same, or payment of taxes thereon.

Erroneous sales may be canceled by clerk.

§ 62. Whenever it shall be made to appear to the satisfaction of the clerk of the county court, before the execution of a deed for lands or lots sold for taxes, or if the deed be returned by the purchaser, that any tract or lot was sold, which was not subject to be taxed, or upon which taxes had been paid previous to the sale, he shall make an entry opposite to such tracts or lots on the list of sales, that the same was erroneously sold, and such entry shall be evidence of the fact therein stated.

Redemption receipt vacates sale.

§ 63. The receipt of the redemption money of any tract of land or lot, by any purchaser, shall operate as a release of all claim to such tract or lot, under or by virtue of the purchase.

Purchaser allowing land to be sold again extends time for deed.

§ 64. If any purchaser of lands sold for taxes shall suffer the same to be again sold for taxes before the expiration of two years from the date of his or her purchase, such purchaser shall not be entitled to a deed for the land until the expiration of two years from the date of the second sale; during which time the land shall be subject to redemption upon the terms and conditions prescribed in this act, but the person redeeming shall only be required to pay,

for the use of such first purchaser, the amount paid by him, and double the amount paid by the second purchaser.

§ 65. If any collector, by himself or deputy, shall fail to attend any sale of lands advertised according to the provisions of this act and make sale thereof as required by law, he shall be liable to pay into the state and county treasury the amount of taxes and costs due upon the lands and lots so advertised, in the same manner as if they had been sold: *provided*, that he may afterwards advertise and sell such delinquent property to reimburse himself for the amount advanced by him; but at no such sale shall there be any property forfeited to the state.

Neglect of collector to attend sale; forfeiture.

Proviso; may again advertise.

§ 66. No collector or treasurer shall, either directly or indirectly, be permitted to take, buy, shave or receive, be himself or agent, any auditor's warrant or warrants, or any county order, or jury certificate, at less than the full amount due thereon.

Collector or treasurer not to buy or shave warrants or orders.

§ 67. On the first day of January next after taking the census in the state, or as soon thereafter as the returns of said census may be made to the office of the secretary of state, it shall be the duty of said secretary to make out and deliver to the auditor a correct statement of the number of white children in each county in this state, twenty years of age and under; the truth of said certificate shall be certified to by said secretary, and thereupon, under the supervision of the commissioners of the school fund, the auditor shall make a dividend to each county of the interest due upon the school, college and seminary fund, in proportion to the number of persons in each, of the age aforesaid; and dividends shall be made according to the proportion ascertained to be due to each county annually thereafter, until another census shall have been taken, and then apportionments shall be made and continued as aforesaid, according to the last census.

Secretary of state after census to make report to auditor of white children.

To be certified.

School fund to be apportioned.

§ 68. The auditor shall, within five days after ascertaining the amount due, as required in the foregoing section, make out and forward by mail to the school commissioner of each county, an order on the collector for the amount due said county: *provided*, that if the amount of interest due to any county shall exceed the amount of revenue, state tax, due from such county, then the auditor shall issue an order as aforesaid for the amount of revenue that he believes, from the returns of the assessment for that year, will be collected, and shall issue and forward with the order a warrant on the treasurer for the balance of interest that may be due to such county, which shall be paid out of any moneys not otherwise appropriated.

Auditor to give order on collector for school money.

Proviso.

§ 69. On or before the first day of April, annually, or so soon thereafter as the school commissioner shall present the order of the auditor, the collector shall pay to said commissioner the amount due thereon: *provided*, that if the said collector has not collected a sufficient amount of state revenue to pay said order, and shall make oath of that fact, then he shall pay the amount he has collected, and shall pay the remainder on or before the fifteenth day of May next thereafter; but if any collector shall refuse to pay the

Collector to pay school commissioner.

Proviso to pay amount collected.

Collector refusing to pay, suit to be commenced.

interest on the school fund as required by this section, and shall refuse to make oath as aforesaid, it shall be competent for the commissioner to proceed against such collector and his securities, in an action of debt in the county court, which court is hereby vested with full power and authority to hear and determine all such suits, render judgment, and issue execution. Said collector shall be liable to pay the full amount stated in the order, notwithstanding he may not have collected that amount; and if any collector shall pay a portion of the amount due as aforesaid, and shall fail to pay the remainder as required by this section, the commissioner shall proceed against him as above provided for.

Collector to pay to state treasury.

§ 70. Upon ascertaining the amount due to the state from any collector, or other person, the auditor shall give such person a statement of the amount to be paid, and upon the presentation of such statement to the treasurer, and the payment of the sum stated to be due, the treasurer shall give duplicate receipts therefor, one of which shall be filed in the auditor's office, and entered in a book to be kept for that purpose, and the other shall be countersigned by the auditor, and delivered to the person making the payment; and no payment shall be considered as having been made until the treasurer's receipt shall be countersigned by the auditor as aforesaid. When the list of delinquent lands is returned by the auditor for sale, he shall certify to the clerk the amount of the county's proportion of the tax paid into the state treasury, and the amount so certified shall be paid into the county treasury out of the tax due from the collector to the state.

Receipt to be given, countersigned by auditor.

On return of delinquent list, auditor to certify.

Auditor to prepare and furnish forms and instructions.

§ 71. The auditor of public accounts shall, as soon as practicable after the passage of this act, prepare and transmit to the several county clerks all such forms and instructions as he shall deem necessary to carry into effect its provisions. Said auditor shall cause to be printed, with the forms and instructions required by this section, a true and correct copy of this act, and shall forward a sufficient number thereof for the use of the several county officers, to the clerk of the county court of each county, who shall deliver the same to the proper officers. The expenses of the printing required by this section shall be paid for as other printing ordered by this general assembly is paid for.

Publication of this act.

Fees and compensation to clerks of county court.

§ 72. There shall be allowed and paid for services rendered in pursuance of this act, the following fees and compensation: to clerks of county courts, for making lists of delinquent lands for the auditor's office, three cents for each tract described in said list, to be paid for out of the state treasury, which shall be in full for comparing and correcting the collector's return of said delinquent lands to his office, as well as for making the list aforesaid, and comparing and certifying to the list for the use of the collector. For making record of delinquent lands and town lots for judgment, including the order of court, three cents for each tract and one cent for each town lot. For making transcript of judgment for sale, three cents for each tract, and one cent for each town lot. For assisting the collector in selling lands and lots, twenty-five

cents for each tract, and five cents for each town lot, for which a certificate is given, to be charged and collected as costs. For making transcript of taxable real property for the assessor, two cents for each tract of land, and one half cent for each lot, to be paid out of the state treasury. For comparing the assessor's return with the original list of real property, extending the tax on each tract and lot, and adding up the aggregate amount of the tax thereon, two cents for each tract or subdivision, and one half cent from each town lot; and for making copy of the assessment list for the collector, one cent for each tract, and one half cent for each town lot. For entering list of lands furnished by the auditor, in the tract books, one cent for each tract. The same fees shall be allowed for computing the tax on each person's personal property, and for copying the same, as is allowed on town lots; all of which fees shall be paid out of the county treasury. The collector shall be allowed for making list of delinquent lands to be filed with the clerk, and adding up the amount of tax thereon, three cents for each tract to be paid out of the state treasury. For selling lands and town lots, ten cents for each tract, and three cents for each town lot sold, to be charged and collected as costs; but no costs except the printer's fees shall be charged or collected on any lands or town lots forfeited to the state. Collectors shall be allowed a commission on all moneys collected, of five per cent. on the first eight thousand dollars, and three per cent. on all additional sums collected by them, to be paid by the state and county in proportion to the amount of state and county tax collected; and the auditor shall allow said collector, in his settlement, in addition to the commissions aforesaid, two dollars for every twenty miles necessary travel, in going to and returning from the seat of government, for the purpose of paying over the state tax. County treasurers shall be allowed a commission of one per cent. on all moneys, county orders and jury certificates received by them for county purposes, and one per cent. on all moneys paid out by them, but they shall not be allowed any compensation for paying moneys over to a successor.

To county collector.

To county treasurer.

§ 73. If any officer shall fail or neglect to perform any of the duties required of him by this act, upon being required so to do by any person interested in the matter, he shall be liable to a fine of not less than ten dollars, nor more than one hundred dollars, to be recovered in an action of debt in the circuit court of the proper county, and may be removed from office, if, in the opinion of the court before whom such suit may be tried, the circumstances require such removal; and any officer who shall knowingly violate any of the provisions of this act, shall be liable to a fine of not less than ten dollars, nor more than one thousand dollars, to be recovered in an action of debt in any court having jurisdiction of the amount, and may be removed from office at the discretion of the court.

Neglect of duty by officers.

Penalty.

How recovered.

Removal from office.

Penalty for violation of this act.

§ 74. The rate of taxation for state purposes for the year A. D. Rate of taxation

for state purposes.

1853, and forever thereafter, until otherwise provided by law, shall be two mills on every dollar's worth of taxable property, for the payment of the state debt, one and one-half mills on every dollar's worth of taxable property for the payment of the interest on the state debt, and one mill on every dollar's worth of taxable property; for defraying the expenses of the government.

Application of this act.

§ 75. This act shall apply to and be in force in the several counties adopting the act to provide for township organization, and shall be in force from and after its passage.

Approved February 12, 1853.

In force Feb. 12, 1853.

An Act to amend the Revenue Laws of this State.

Preamble.

Whereas doubts have arisen as to whether the sheriff or treasurer of counties that are organized under the township organization law should execute deeds for lands sold for taxes in said counties; and whereas, deeds for lands sold for taxes have been executed sometimes by sheriff and sometimes by county treasurer; therefore,

Tax deeds heretofore executed declared valid.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That all deeds heretofore executed by any sheriff or county treasurer of the proper county for lands sold for taxes in counties that have adopted the township organization, shall be as valid and effectual to pass the title to such land as if the same had been made by the proper officer.

Sheriff to make deeds.

§ 2. In all cases where lands have heretofore been or may hereafter be sold, in counties organized under the township organization law, and deeds have not been made to the purchasers thereof, such deeds shall be made by the sheriff of the proper county, at the time when by law such deeds should be made.¹

Approved February 12, 1853.

In force April 24, 1861.

An Act to amend the Revenue Law.

Tax deeds heretofore made, held null and void, if shown taxes were paid; or land redeemed; or notice not given.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That all deeds hereafter made in pursuance of sales of real estate for the non-payment of taxes shall be held to be null and void, if it be shown that said taxes had been paid before the sale, or that said real estate was not subject to taxation, or that it had been redeemed from said sale, or if the notice required by the constitution was not given, or that the description of said land was not sufficiently definite; and the validity of all such deeds, hereafter made by the proper officers, for real estate sold for the non-payment of taxes, shall not be questioned in any suit or controversy in this state, for any other cause, unless the party wishing to contest the same shall tender to the

Validity not to be questioned, unless taxes tendered.

(1) Upon the subject of tax titles, the following cases may be referred to, in addition to those already cited: *Fitch et al., v. Pinckard et al.*, 4 *Scam.*, 69. *Swiggart et al. v. Barber et al.*, *Id.*, 370. *Hill et al. v. Leonard, Id.*, 742. *Maxey v. Claybaugh*, 1 *Gilm.*, 26. *Hinman v. Pope, Id.*, 131. *Vance v. Schuyler, Id.*, 160. *Messinger v. Germain, Id.*, 631. *Sillman v. Fyre, Id.*, 664. *Bestor v. Powell*, 2 *Gilm.*, 119. *Atkins v. Hinman, Id.*, 437. *Thomson v. Schuyler, Id.*, 271. *Rhinehart v. Schuyler, Id.*, 473. *Job v. Tibbets*, 5 *Gilm.*, 376.

claimant under said tax deed, or deposit in the court in which such suit is pending, for his use, the amount of the redemption money now provided for by law, with ten per cent. per annum interest thereon from the date of said deed to the time of said tender or deposit; and after said tender or deposit is made, the validity of said deed may be questioned in the same manner, and to the same extent, as now provided by law.

Approved February 21, 1861.

An Act to amend an act entitled "An act regulating the collection of the Revenue in counties adopting the Township Organization law," approved February 22, 1861.
February 12, 1853.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That in all cases which have arisen since the passage of the act hereby amended, or which shall arise, in which this objection has been offered or shall be offered to the entry of judgment against real estate for taxes, interest and costs due severally thereon, as provided in the thirty-fifth section of said act, to wit: that the collector might have collected the said taxes, interest and cost, by distress and sale of personal property; and in case the said objection has been or shall be sustained, and in all cases which have arisen since the passage of said act, or which shall arise, in which taxes, interest and costs due on personal property have not been collected, or shall not be collected, then the board of supervisors may, at their annual meeting, direct the county clerk to add said taxes, interest and costs, or any part thereof, to the collector's lists, to be collected as other taxes: *provided*, that such taxes, interest and costs shall not have been otherwise collected; *and provided*, that the collection of said taxes, interest and costs shall not have been estopped by legal proceedings, other than the sustaining of said objection: *and provided further*, that no action shall have been commenced to enforce the payment of such delinquent taxes.

Reference to former act, by this amended.

Objection to entry of judgment.

Board of said supervisors may direct taxes, interest and costs to be added.

Proviso.

§ 2. This act shall apply to and be in force from and after its passage, in the several counties adopting the act to provide for township organization.

Approved February 22, 1861.

An Act to enable the Auditor of public accounts to collect the Revenue.
In force February 17, 1851.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That when real estate shall be levied upon to satisfy any judgment in favor of the state, it shall be the duty of the officer making such levy, to transmit by mail, to the auditor, at least twenty days before the day of sale, a correct statement, showing the description and value of said property, in cash; the truth of said statement shall be attested by the oath of said officer. And the auditor is hereby authorized and required to purchase, in the name and for the use of the state of Illinois, at

Duty of officer levying.

Auditor to purchase for state.

- Redemption. a price not exceeding two-thirds of said value, so much of said property as may be required to pay the amount of the judgment and costs aforesaid; and it shall be the duty of the officer making such sale to forward to the auditor a certificate of purchase, and make his return, as required in other cases of sales on execution. Any person desiring to redeem said property from such sale, shall pay the amount of redemption money into the state treasury; and, thereupon, the auditor shall indorse such payment on the back of the certificate of purchase aforesaid, and deliver it to the person so paying; which shall have the same effect as redemptions have in other cases; but no real estate purchased as aforesaid shall be considered redeemed from such sale until the redemption is paid into the state treasury.
- Redemption money. § 2. All moneys received by any sheriff, or other officer, for the redemption of any real estate sold to the state, on execution, shall be paid by such officer into the state treasury, or to the collector of his country, as may be directed by the auditor, within twenty days after demand is made by said auditor, and shall be paid into the state treasury, by such collector, when he makes settlement for the state revenue: *provided*, that the demand aforesaid may be made by any person authorized by the auditor to make such demand.
- If not redeemed. § 3. If any real estate, purchased by the state on execution, shall not have been redeemed, or may not hereafter be redeemed, within the time required by law, it shall be the duty of the auditor to obtain a deed or deeds therefor; which he shall cause to be recorded in a book kept for that purpose, in his office, and shall take such steps as he shall deem necessary to protect the timber, or other fixtures thereon, from being lost or destroyed.
- Auditor to sell. § 4. The auditor of public accounts is hereby authorized and empowered to sell, transfer and convey, by deed, any and all real estate that may have been heretofore, or may be hereafter purchased, to satisfy, or in payment of any judgment, or any execution in favor of the state, by this state, or by any officer of this state, for the benefit and use of the state, to any person or persons who may pay into the state treasury the full amount paid by the state for said property, and six per cent. interest thereon, from the date of said sale to the time of such payment: *provided*, that such amount shall be equal to the amount due the state on the judgment or decree on which the sale was made; or if not, the sale may be made at such price, not less than the price paid for the property as aforesaid, as the judge of the county court and the sheriff of the county in which the estate is situated shall certify the same to be worth.
- Proviso. § 5. State's attorneys, in addition to the duties now required by law, shall prosecute all suits in favor of the state when required by the auditor; and where there is no other fee allowed by law for such service, they shall be allowed and paid out of the state treasury the sum of five dollars, for commencing and prosecuting suits
- Duty of state's attorneys.

as aforesaid, to be paid on the certificate of the auditor, and approved by the governor.

§ 6. If the back taxes on any forfeited property have not been collected, or the property sold as provided for by an act entitled "An act to provide for the collection of the revenue on forfeited property," approved February twelfth, eighteen hundred and forty-nine, said taxes, with the interest and cost due thereon, shall be added to and collected with the tax of the current year: *provided*, that where such taxes have not been added to the list for the current year, the clerk shall add them to the taxes of the year A. D. one thousand eight hundred and fifty-one. Said property shall be advertised and sold in the same manner as required by the act aforesaid. Back taxes.

§ 7. Deeds on sales made in pursuance of this act, or of the foregoing recited act, shall be made by the sheriff or collector, as provided for in other cases of sales for taxes. Deeds

§ 8. In all cases where the collectors of the tax of the year A. D. one thousand eight hundred and forty-nine, did not receive the tax books within the time required by law, or where any of the collectors aforesaid failed to obtain judgment on the delinquent list, at the time required by law, the auditor is hereby required to remit the interest on the accounts of such collectors; and in all cases where such interest has been paid into the treasury, the auditor shall cause the same to be refunded by drawing his warrant on the treasurer for the amount so paid. Interest remitted, in what case.

§ 9. Sheriffs and collectors of the revenue for the year one thousand eight hundred and fifty-one, and subsequent years, shall be allowed a commission upon all moneys paid in to the state and county treasuries, of five per cent. on the first eight thousand dollars, three per cent. on the next ten thousand dollars, and two per cent. on all additional sums, instead of the commission now allowed by law; which allowance shall be apportioned between the county and state, in proportion to the amounts collected and paid over. Collector's commissions.

§ 10. This act to take effect and be in force from and after its passage.

Approved February 17, 1851.

MISCELLANEOUS.

[From Chapter 39 of the Revised Statutes.]¹

SECTION 1. All property, real and personal, within this state shall be liable to taxation, subject to the exceptions hereinafter stated. What property taxed.

* * * * *

SEC. 7. Every hawker or peddler who may desire to hawk or peddle any goods, wares, merchandize or clocks, throughout the Licenses for peddling.

(1) It is believed that so much of the chapter of the Revised Statutes, concerning Revenue, as is here inserted, comprises all of said chapter remaining in force, or that is applicable in counties having township organizations.

state, shall, on the payment of fifty dollars for the use of said state, to the secretary of state, be entitled to receive a license authorizing him to pursue such occupation in every county of the state; and any hawker or peddler may procure a license for a single county on the payment to the county commissioners' clerk of said county, for the use of the county, the sum of ten dollars. Any person pursuing the occupation of a hawker or peddler within this state, or any of the counties thereof, without license, shall forfeit and pay, one-half for the use of the person complaining thereof, and the other half for the use of the state, the sum of one hundred dollars, to be recovered by action of debt in the name of the state of Illinois, before any justice of the peace, or probate justice of the peace, subject to appeal to the circuit court as in other cases: *provided*, that this section shall not apply to persons whose ordinary occupation is not that of a peddler, nor to those engaged in vending articles manufactured in this state.

Penalty for peddling without license.

* * * * *

Auditor obtain accounts of sales of public lands.

SEC. 11. It shall be the duty of the auditor of public accounts, in cases where such abstracts have not already been obtained, and as the same may become necessary, to obtain from the several land offices of the United States at which lands within this state are sold, abstracts, containing a description of all lands sold at each office, the dates of sale, and the names of purchasers; also, maps of the several land districts, where such abstracts and maps have not already been procured.

Auditor furnish lists of lands newly taxable.

SEC. 12. The auditor shall annually transmit to the said clerks, on or before the first day of February, a list of all lands in their respective counties which may have become subject to taxation within the preceding year.

* * * * *

Lands of non-residents, when re-listed.

SEC. 19. Lands and town lots owned by non-residents of the county, when once correctly listed for taxation by their owners, shall not be required to be listed again by them till a sub-division or change of ownership takes place.

Assessment of property omitted.

SEC. 20. If any real or personal property shall be omitted in the assessment of any year or number of years, the same when discovered, shall be assessed by the assessor for the time being, and placed upon the assessment list with the arrearages of tax which might have been assessed with six per cent. interest thereon, from the time the same ought to have been paid; the clerk of the county commissioners' court shall also have power to list any property omitted for a previous year or years, and add the same to the collector's list, and report the same to the county commissioners' court at their next term; and said court is required to enter the same of record, and charge the collector with the same, and the clerk to certify said charges to the auditor at the time of certifying the allowances made to collectors.

* * * * *

SEC. 70. No collector or clerk of any county commissioners' court, shall be, either directly or indirectly, concerned in the purchase of any tract of land or town lot sold for the payment of taxes, under the penalty of one hundred dollars, to be recovered by action of debt.

Collector and clerk not by land sold for taxes.

* * * * *

SEC. 88. At any time after the close of any such sale as aforesaid, the clerks may sell any of the lands and town lots offered for sale which were not sold for want of bidders, to any person wishing to purchase the same, who shall pay the State and county tax, together with the costs and interest due thereon.

Lands not bid for at tax sale, sold afterwards.

* * * * *

SEC. 92. The clerks of the county commissioners' courts shall be liable for all redemption money of lands and lots which may come into their hands as such, and shall pay the same over on demand being made by a proper person, and in case of failure or refusal so to do when demanded as aforesaid, then his office shall be considered vacated; and thereupon the county commissioners' court shall appoint some suitable person to fill such vacancy until the same be filled in the manner now prescribed by law.

Clerks liable for redemption money.

SEC. 93. Lands sold by the state, though not granted or conveyed, shall be assessed in the same manner as if conveyed, but such lands, when forfeited to the state for the non-payment of taxes thereon, shall not in any case, be sold for such non-payment as other lands, and shall not afterwards be subject to taxation until again sold by the state.

Assessment of lands granted by state.

Such lands not forfeited.

SEC. 94. Whenever any purchaser of canal lands or lots, shall fail to pay the taxes assessed thereon, as required by the terms of sale provided by law, it shall be the duty of the collector forthwith to report such failure to the acting commissioner of the Illinois and Michigan canal, who shall enter the said lands or lots as forfeited to the state, and thenceforth all right, interest and title of the said purchaser shall cease; the said lands shall not in any case be sold for the non-payment of taxes, and any such sale, if made, shall be void.

Non-payment of taxes on canal lands.

* * * * *

SEC. 96. Persons paying taxes on lands advertised for sale for the taxes due thereon, previous to the sale, shall be required to pay the costs of advertising, and all other costs which may have accrued up to the time of such payment.

Payment of costs on advertisements for taxes.

* * * * *

SEC. 98. No sheriff or deputy sheriff shall be eligible to the office of county treasurer, nor shall any county treasurer hold the office of sheriff or collector.

Sheriff not to be county treasurer.

* * * * *

SEC. 103. If any collector shall receive the taxes upon any land or real estate, and shall knowingly include the same land or real estate in the list of lands returned by him on which taxes

Penalty for returning taxes as unpaid when paid.

have not been collected, and the said lands shall be sold for the taxes thereon, he shall be deemed guilty of a misdemeanor, and on indictment and conviction thereof, shall be removed from office, and shall, moreover, be liable to the party injured for all damages.

* * * * *

Collector not buy
auditor's war-
rant.

SEC. 105. No collector shall, either directly or indirectly, be permitted to take, buy, shave or receive, by himself or agent, any auditor's warrant or warrants, at less than the full sum due thereon to the holder of such warrant or warrants.

Penalty for so
doing.

SEC. 106. Any collector, who shall violate the provisions of the foregoing section, shall be liable to pay double the amount made by purchasing or shaving said warrants at less than their face, in an action of debt, before any court of the proper county; one-half the amount so recovered, shall go to the person complaining, and the other half shall be paid into the state treasury, and his office shall be vacated.

Payment of in-
terest on county
school fund.

SEC. 107. Hereafter, the interest on the school fund belonging to the several counties of this state, shall not be required to be paid into the state treasury; but the auditor shall, as now required by law, ascertain the amount payable to each county, and certify the same to the collector, who shall thereupon pay over to the school commissioner of his county, such amount, and take his receipt therefor; and on settlement with the auditor, the said collector shall be credited with the amount specified in said receipt, in the same manner as if it had been paid into the treasury.

DIVISION VI.

MISCELLANEOUS PROVISIONS.

BRIDGES.

An Act to provide for the better protection of the public Bridges in this State. In force Feb. 20, 1861.

SECTION 1. *Be it enacted by the people of the State of Illinois,* Driving over bridge faster than a walk prohibited.
represented in the General Assembly, That if any person shall ride, lead or drive any wagon, carriage, dray, cart or other vehicle or conveyance, or any horse, mare, mule or ox, or other animal, over, on or across any public bridge, or any bridge used by the public, within the limits of this state, [faster than a walk,] he shall forfeit Penalty.
 and pay for each offence the sum of five dollars; which penalty shall be collected, either before a justice of the peace, or by indictment in the circuit court of said county, as is now provided by section one of an act entitled, "an act to amend chapter ninety-three of the revised statutes, entitled, 'roads,'" approved June 22, 1852. How prosecuted.

§ 2. It shall be the duty of the commissioners of highways of each town, in counties under township organization, and of the county courts of all other counties, to cause boards to be placed upon the bridges across the principal streams in their respective towns. Said board shall be elevated, so as to be easily seen by travelers, and on each side of said boards shall be printed, in capital letters, the words: "five dollars fine for leading or driving any beast faster than a walk on or across this bridge." Boards to be put up on bridge. Inscription on board.

§ 3. This act shall take effect and be in force from and after its passage.

Approved February 20, 1861.

CENSUS.¹

An Act to provide for taking the Census.

SECTION 1. *Be it enacted by the people of the State of Illinois,* Enumeration for 1855 how taken.
represented in the General Assembly, That the enumeration of the inhabitants of this state for the year 1855 shall be taken in conformity with the provisions of the nineteenth chapter of the revised laws of 1845, except that in counties having adopted the township organization, the board of supervisors shall appoint the commissioners, whose duty it shall be to take the enumeration of the inhabitants of this state, and except also that the list of property provided for in the second section of said act shall not include the value of grain raised last year; and also that the said commissioner appointed Exception in counties having township organization.

(1) For provisions in full concerning CENSUS, see Appendix, p. 243.

Proviso.

to take the census shall have the right to appoint one or more deputies under them, who shall take the same oath and perform the same duties as their principals: *provided*, the county judge shall have the power of appointing the persons to take the census for the counties of Adams, Hancock and Henry. This act to take effect and be in force from and after its passage.

Approved February 15, 1855.

COUNTIES AND COUNTY COMMISSIONERS' COURTS.¹

(From Chapter 27 of the Revised Statutes.)

Each county a body politic.

Style.

SECTION 1. Each county which has heretofore been, or may hereafter be established in this state, according to the laws thereof, shall be a body politic and corporate, by the name and style of "the county of ———" and by that name may sue and be sued, plead and be impleaded, defend and be defended against in any court of record, either in law or equity, or other place where justice shall be administered.²

County commissioners' court.

SEC. 2. There shall remain, as at present established, in each county of this state, and shall be established in each county hereafter created, a court of record, to be constituted, composed of three commissioners, elected by the people as hereinafter provided, to be styled "the county commissioners' court of ——— county."

Election of county commissioners.

To be sworn.

SEC. 3. Such commissioners shall be elected as provided in chapter thirty-seven (title "ELECTIONS,") of the Revised Statutes. Previous to entering upon their duties they shall be sworn, before some justice of the peace, judge of the circuit court or clerk of the circuit court, faithfully to perform the duties of their office to the best of their knowledge and ability.

To draw lots for term of office.

SEC. 4. At the first meeting of such commissioners after they shall have been so elected and sworn, the clerk of said county commissioners' court, shall prepare three tickets, upon one of which he shall write the words "*one year*," upon another the words "*two years*," and upon the other the words "*three years*," which tickets so prepared shall be presented by said clerk with the writing thereon concealed, to such county commissioners, and each of said commissioners shall draw one of said tickets.

Term decided by lot drawn.

SEC. 5. The term of service of the commissioner who draws

(1) The county commissioners' court has been superseded under the new constitution by the county court, and its power transferred to the latter court. In counties adopting township organization, the officers of the county court are transferred to the board of supervisors; this board, therefore, in determining their whole duty will have to look back through all the statutes relating to the powers and duties of the county commissioners and county court. It being the object of this compilation to embrace all the law remaining in force, applicable to township organization, including that which relates to the powers and duties of boards of supervisors, the entire chapter of the Revised Statutes concerning the county commissioners' court has been here inserted, without the omission of any portion thereof, as there may be some doubt as to what portion is repealed, or is inapplicable.

(2) Statutes defining the boundaries of a county are public acts, and the courts are bound judicially to notice them. In an action *quare clausum fregit* proof that the trespass was committed in the government section, township and range alleged, is sufficient, without proof, that such section was in the county alleged.—*Ross et al. v. Reddeck*, 1 Scam., 73.

The legislature can not abolish counties, and form their territory into one or more counties, nor take territory from one county and add it to another, nor remove a county seat, without submitting the act to a vote of the inhabitants affected by such changes.—*The People ex rel. v. Marshall*, 12 Ills., 391.

the ticket upon which is written "*one year*," shall expire at the end of one year; the term of service of the commissioner who draws the ticket upon which is written "*two years*," shall expire at the end of two years; and the term of service of the commissioner who draws the ticket upon which is written "*three years*," shall expire at the end of three years; the result of which drawing shall be entered by the clerk upon the records of the court.

SEC. 6. The two preceding sections shall be deemed to apply only to commissioners elected at the first elections to be held in counties hereafter to be organized. Thereafter in all such new counties, as well as in all counties now organized according to law, one commissioner shall be elected at the general election in each year as provided in chapter thirty-seven, (title "*ELECTIONS*,") to supply the place of the commissioner whose term of office shall then expire; it being intended that after such first election, each commissioner shall hold his office for the term of three years.

SEC. 7. Whenever a vacancy shall happen in the office of county commissioner by death, resignation or otherwise, it shall be the duty of the clerk of the county commissioners' court of the county in which the vacancy shall happen, to issue his order to the judges of election in the different precincts in said county, requiring them on a certain day not less than twenty days from the date of such order, to hold an election to fill such vacancy: *provided*, that if the term of service of the commissioner whose vacancy is to be filled, would have expired within six months of the happening of said vacancy, it shall not be necessary for the clerk to order an election to fill such vacancy.

SEC. 8. There shall be elected in each county, a county commissioners' clerk, who shall hold his office four years, and until his successor is elected and qualified. In counties hereafter to be organized, they shall be elected at the first election of county commissioners, and in like manner every four years thereafter. In counties now existing they shall be elected at the periods and in the order of time by law established.

SEC. 9. Each clerk so elected and qualified shall keep his office at the place of holding court for each county respectively; and each and every clerk before he enters on the duties of his office, shall take an oath to support the constitution of the United States and of this state, and the oath of office, in open court, and enter the same on record, and give a bond with good securities to the county commissioners, to be approved by them for the use of any person or persons injured, or for the use of the county if injured, in the penal sum of one thousand dollars, conditioned for the faithful performance of the duties of his office.

SEC. 10. The county commissioners' court of any county may, for misconduct in office, gross neglect of duty, incompetency, or other good cause shown, to be entered upon the record of their said court, remove their clerk, whose office shall be considered vacant.

SEC. 11. Whenever, by reason of death, resignation, removal, Clerk *pro tem.*, in case of vacancy.

or any other cause, the office of clerk shall become vacant, the court may appoint a clerk, *pro tempore*, who shall perform the duties of such office until such vacancy shall be filled.

Vacancy how filled.

SEC. 12. Such vacancy shall be filled in the same manner as is provided in section seven of this chapter, for filling vacancies in the office of county commissioner.

Clerk to deliver books to successor.

SEC. 13. Every clerk who shall refuse or neglect, after going out of office, to deliver to his successor in office, all papers, books, moneys, and all and every thing appertaining to his office, shall forfeit and pay any sum not over five hundred dollars, and be imprisoned any time not exceeding thirty days, at the discretion of the court before which he may be tried: such forfeiture and payment to be independent of, and in nowise discharging or diminishing the obligation of his official bond.

Penalty.

Deeds of conveyance, how made.

SEC. 14. All deeds, grants and conveyances, heretofore made, or which shall be hereafter made, and duly acknowledged and recorded, as other deeds conveying any lands, tenements or hereditaments, to any county or the inhabitants of any county and their successors, or to the county commissioners, or to the county commissioners' court, or to the governor, or any other person or persons by whatever form of conveyance, for the use and benefit of any county, shall be good and valid to all intents and purposes, to vest in such county in fee simple or otherwise, all such right, title, interest and estate as the grantor or grantors in any such deed or conveyance had at the time of the execution thereof, in the lands conveyed, and was intended thereby to be conveyed.

Commissioner to sell land may be appointed.

SEC. 15. The county commissioners' court may, by their order to be entered on their minutes, appoint a commissioner to sell and dispose of any real estate of their county, and the deed of such commissioner, under his proper hand and seal, for and in behalf of such county, duly acknowledged and recorded, shall be sufficient to all intents and purposes, to convey to the purchaser or purchasers, all the right, title, interest and estate whatever, which the county may then have in and to the premises, so to be conveyed.

Bonds for benefit of county, not vitiated for form.

SEC. 16. All notes, bonds, bills, contracts, covenants, agreements or writings made, or to be made, whereby any person or persons is, are or shall be bound to any county or the inhabitants thereof, or the county commissioners, or county commissioners' court, or to the governor, or any other person or persons, in whatever form, for the payment of money, or any debt or duty, or the performance of any matter or thing to the use of any county, shall be as valid and effectual to all intents and purposes, to vest in the said county all the rights, interest and actions, which would be vested in any individual, if any such contract had been made directly to him: suits may be commenced, sued and prosecuted thereon in the name of said county, as is provided in the first section of this chapter, or in the name of the person to whom they are made, to the use of the county, as fully and effectually to all intents and purposes, as any person may or can upon like notes, bills, bonds, contracts, agreements or writings made to him.

Suits on, how prosecuted.

SEC. 17. The county commissioners' court may appoint an agent or agents, to make any contract on behalf of such county for erecting any county building, or for any other purpose authorized by law. The contracts of such agent or agents, duly executed for and on behalf of such county, shall be valid and effectual to bind such county to all intents and purposes.

Agents for county may be appointed..

SEC. 18. All actions, local or transitory, against any county, may be commenced and prosecuted to final judgment and execution in the circuit court of the county against which the action is brought. Any action, local or transitory, in which any county shall be plaintiff, may be commenced and prosecuted to final judgment, in the county in which the defendant in such action resides.

Actions against county, where prosecuted.

When any action shall be commenced against any county, a copy of the summons shall be left with the clerk of the commissioners' court, either during the sitting of said court, or so as a term of said court shall intervene between the day of leaving a copy of such summons and the return day thereof. There shall always be ten days between the service and return of every such summons. In all actions brought by or against every county, the inhabitants of the county so suing, or being sued, may be jurors or witnesses, if otherwise competent or qualified according to law.

Service of process.

SEC. 19. It shall be the duty of the county commissioners' court of each of the counties of this state, to take and order suitable and proper measures for the prosecuting and defending of all suits to be brought by or against their respective counties.

Commissioners to order suits.

SEC. 20. When any judgment shall be rendered against any county, it shall be the duty of the county commissioners' court to order a warrant to be drawn on their treasurer for the amount of the judgment and costs; which warrant shall be paid as other county debts. Nothing herein contained shall authorize any execution to be issued against lands or other property of any county of this state.

Judgments against counties, how paid.

SEC. 21. All the counties of this state or which shall hereafter be erected, which are or shall be bounded, or which may front on either the Mississippi or Wabash rivers, shall respectively have and exercise jurisdiction upon such rivers so far as the counties shall respectively be bounded by the rivers aforesaid; which jurisdiction shall be exercised concurrently by the counties aforesaid, with the contiguous states and territories bounded by said rivers, so far and to such extent as the said rivers shall form the boundary of the counties aforesaid respectively; and also the boundary between this state and contiguous states or territories.

Jurisdiction of counties on rivers.

Concurrent jurisdiction.

SEC. 22. There shall be four sessions of the county commissioners' court in each county in this state, to be holden at the usual place of holding courts, or at the office of the clerk, to commence on the first Mondays of March, June, September and December of each year, and continue six days, if the business shall not be sooner completed.

Terms of commissioners' court.

SEC. 23. Two commissioners shall constitute a quorum to do Quorum.

Want of quorum. business. Should a quorum not meet at any stated meeting of the said court, then the said court shall be considered to be continued by law from day to day, if necessary, until four of the clock in the afternoon of the second day, and then if a quorum be not present for said court, the business therein to stand continued to the next court in course.

Special terms may be called. SEC. 24. Should it be necessary to have a called court on any urgent business, then any one of the county commissioners shall have power to call said court, on giving the other two commissioners five days' previous notice, and the clerk, before said special term of said court. Said special court shall have the same power and authority as when holding a stated court.

Jurisdiction of court. SEC. 25. The said courts shall have jurisdiction throughout their respective counties in all matters and things concerning the county revenue, and regulating and imposing the county tax, and shall have power to grant licenses for ferries and for taverns, and all other licenses and things that may bring in a county revenue; and shall have jurisdiction in all cases of public roads, canals, turnpike roads and toll bridges, where the law does not prohibit the said jurisdiction of said courts; and shall have power and jurisdiction to issue all kinds of writs, warrants, process and proceedings by the clerk, throughout the state, which are necessary to the execution of the power and jurisdiction with which such courts are or may be vested by law.

Issue writs. To procure county seals. SEC. 26. It shall be the duty of the county commissioners in each county, as soon as practicable, to cause to be procured, all the necessary official seals that may be requisite in their respective counties; and they shall be, and are hereby authorized to draw on the county treasurer for the expense of any such seal or seals, which shall be paid for in the same manner as other county debts are paid.

Judicial seal. SEC. 27. The said court of each county shall have a judicial seal; and all warrants, writs, process and proceedings to be issued by said court, shall be sealed with said seal, bearing date the time they issue, and be signed by the clerk of said court. All such process shall run "*In the name of the people of the state of Illinois,*" and may be executed and returned as other process, by the sheriff or any constable of the county.

Style of process. May enforce writs. SEC. 28. The said court of each county respectively, shall have power and jurisdiction to compel and enforce by writ or writs of attachment, or other process, the orders, decrees or judgments of said courts respectively.

Jurisdiction limited and restricted. SEC. 29. There shall be nothing contained or construed in this chapter, to give the said court any original or appellate jurisdiction in civil or criminal suits or actions, wherein the state is a party, or any individual or individuals, bodies politic or corporate, are parties; but said court shall have jurisdiction in all cases where the matter or thing brought before the said court relates to the public concerns of the county collectively, and all county business, and

the said court shall have power to punish for contempt, as other courts may do, and have all the power necessary to the right exercise of the jurisdiction with which said court is or may be vested according to law; and the clerks of said courts respectively, shall have the same fees, emoluments and perquisites of office, as are given to the other clerks of courts of this state by law, for the like services, or as may be given them by law.

SEC. 30. It shall be the duty of justices of the peace, and of all other officers, to account for, and pay over to the county commissioners' court of the county within which such officer shall reside, at or before the December term of the said court, in each and every year, all sums of money recovered by fine, penalty or otherwise, which by law is required to be paid into the treasury of the several counties in the same kind of funds received by them.

SEC. 31. Any officer failing to comply with the foregoing section, shall forfeit and pay the sum of seventy-five dollars, with any money by him not accounted for and paid over as aforesaid, to be recovered by motion before the circuit court of the county wherein default is made, for the use of said county, together with the costs of said motion: *provided*, that the officer against whom the motion is made shall have notice thereof at least ten days before the first day of the term at which such motion is made.

SEC. 32. There shall be allowed to each county commissioner in full for his services for each day's attendance in holding courts, the sum of one dollar and fifty cents, to be paid on the certificate of the clerk, out of any moneys in the treasury of the county, not otherwise appropriated.

SEC. 33. That commissioner who shall be oldest in commission shall preside at all meetings of the court.

SEC. 34. It shall be the duty of the county commissioners' courts, in their respective counties, to prepare or cause to be erected, when, in the opinion of said court, the means of the county are such as to justify it, and where they have not heretofore done so, strong and substantial jails, so that prisoners may be confined therein with safety; and the said commissioners are hereby expressly charged with the faithful execution of this law, and they shall make report thereof respectively, to the circuit court, at the next term in the county after the same shall have been done, and said report shall be entered upon the records of the said circuit court.

SEC. 35. It shall also be the duty of the said county commissioners, in each county, to cause to be erected, when, in the opinion of said court, the means of the county are such as to justify it, a suitable court house in each of their respective counties; and they shall have power to enter into contracts from time to time, with any person or persons, in behalf of the county, for the erection of such court houses, or finishing any court house already begun, at any regular term of their court, or at any special term they may appoint.

SEC. 36. The county commissioners' courts in each county,

May punish for contempt.

Justices and others to account to commissioners.

Penalty for failure to account and pay over money.

Compensation of commissioners

Presiding commissioner.

Commissioners to erect jails.

To report to circuit court.

To erect court house.

Contract to erect court house.

Lot to erect county buildings on.

shall have power to contract for and procure, for the use of their respective counties, whenever it shall become necessary, any lot or lots of land, whereon to erect such county buildings, and obtain deeds of conveyance to such counties, and to sell and convey the same when it shall become necessary, to any purchaser or purchasers, in the manner prescribed by law.

May lease rooms
in court house
not occupied by
officers.

SEC. 37. The county commissioners' courts of any county in this state are hereby authorized to lease such vacant room or rooms as offices, as may be in the court house of said counties and not occupied by and furnished for the sheriff, clerk of the circuit court, clerk of the county commissioners' court, and probate justice of the peace of said counties, for any term not exceeding one year, and for such rent or rents as they may think right and proper.

Custody of court
house.

SEC. 38. The county commissioners of said counties shall have the care and custody of said court houses; any law or usage to the contrary notwithstanding.

County lines.

SEC. 39. Hereafter, in all cases of division of any county in this state, by petition or otherwise, it shall not be lawful to establish any boundary line within less than ten miles of the seat of justice of the county to be divided.

Size of counties.

SEC. 40. Hereafter no county in this state shall be curtailed in its limits so as to reduce the territory to less than four hundred square miles, nor shall any county be created hereafter, the territory of which shall contain less than four hundred square miles.

Statement of fiscal
concerns of
county.

SEC. 41. It shall be the duty of the commissioners' court of each county to cause a complete statement in writing of the fiscal concerns of the county to be made out at their March term, annually, which shall specify the amount of money paid out of the county treasury during the preceding year, to whom paid, and for what purposes; and likewise the amount of the county orders issued and unredeemed during the same year; and the clerk of said court shall keep said statement posted up in his office for the period of one month at least, from the end of said term; and for failing to perform this duty, he shall pay a fine of ten dollars. Each county commissioner who shall neglect to cause such statement to be made out, shall also pay a fine of ten dollars, to be recovered by action of debt, at the suit of any individual, before any justice of the peace of the county; one-half for the use of the county, and the other half with costs of suit, for the use of the person so suing.

Clerk to post
statement.

Penalty.

Appeals allowed.

SEC. 42. Any party to a proceeding had before any county commissioners' court, who may feel aggrieved by the final decision, judgment or order of such court, shall be allowed to appeal to the circuit court of the county in which the decision, judgment or order may have been made: *provided*, the appeal be prayed during the term of the court at which the decision, judgment or order may be rendered: *and, provided further*, that the party praying appeals shall be required to execute bond, with good security, to be approved by the court, payable to such person, and with such conditions as the court shall require; and after the execution of the appeal

Proviso.

Appeal bond.

bond, the clerk of the commissioners' court shall file with the clerk of the circuit court, a full and complete transcript of the record and proceedings of the court, together with the appeal bond, and all original papers relating to the case; and the clerk of the circuit court shall thereupon issue a summons against all parties interested in the decision, judgment or order appealed from, as in cases of appeals from judgments of justices of the peace, and if a county be interested, the summons shall issue against the county commissioners of such county.

Transcript of record.

Appeal summons.

SEC. 43. The circuit courts shall have jurisdiction to hear and determine all such appeals, and shall give such judgment in respect to the rights of the parties, as the commissioners' court should have given, and shall have power to make all such orders, and to issue all such process and notices as may be necessary to bring all persons interested before the court; and on the trial of such appeals, the court shall proceed in all respects as is or may be required in the trial of other appeal cases in said court; and the judgment of the court in the premises, shall be final and conclusive upon the parties, unless an appeal be taken to the supreme court. The said circuit court shall also have power to remand all such cases to the county commissioners' court, with directions to carry into effect, so far as relates to rights of parties, the judgment of said court: *provided*, that in cases so remanded, the circuit court shall make out and deliver a written opinion to be entered of record, and transmitted to the county commissioners' court.

Jurisdiction of circuit court to hear appeal.

Appeal to supreme court.

Proviso.

SEC. 44. The county commissioners' courts of the several counties in this state, are hereby authorized and required, whenever the finances of any county in this state shall justify such expenditure, to cause to be erected a fire proof recorder's office, on some suitable lot at their respective county seats, and pay for the same in the same manner as court houses and jails are paid for: *provided*, that if the county commissioners' court of any county as aforesaid shall be of opinion that any one of the rooms unappropriated in their court houses respectively can be made fire proof, they shall be required and authorized as aforesaid to cause such improvements or additions to be made to any such room as will render the same fire proof; in which said fire proof buildings or room, the records and office of county recorder shall be kept.

Fire proof recorder's office.

Proviso.

SEC. 45. The provisions of the foregoing section may, at the discretion of the county commissioners' court of any county in this state, be deemed to apply to the offices of clerks of the county commissioners' and circuit courts, respectively.

Other clerk's offices.

SEC. 46. In all cases when orders for money are issued by the clerk of any county commissioners' court, in any county of this state, upon the treasurer of such county, the said orders, before they are delivered to the person or persons for whose benefit the same is or are drawn, shall be severally presented by the clerk to the said treasurer, who shall personally countersign the same; and shall also enter in a book, to be kept for that purpose, the date,

County orders to be countersigned.

amount and number of each of said orders, and the name or names of the person or persons in whose favor such orders are drawn respectively.

Blanks filled before countersigned.

SEC. 47. No county treasurer shall countersign any county order before the same is filled up, nor until he shall examine the records of the court, and be satisfied that the order to be issued is warranted by the order of the county commissioners' court.

Approved March 3, 1845.

An Act authorizing County Commissioners' Courts to provide for the safe keeping and preserving all the Public Records belonging to said Counties.

Fire proof buildings for records.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the respective county commissioners' courts of this state be, and they are hereby authorized to erect, build and provide permanent fire-proof rooms, houses or vaults, for the purpose of placing therein and preserving from injury, damage, loss or destruction by fire, the records and documents of their respective counties.

Approved March 3, 1845.

[AMENDATORY to Chapter 27 of the Revised Statutes.]

An Act to encourage the Apprehension of Horse Thieves.

Reward may be offered for horse thieves.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That it shall be lawful for the county commissioners' courts of the several counties in this state, by an order to be entered upon their records, to fix upon a sum, not exceeding fifty dollars, as a reward to be paid to any person or persons who shall hereafter pursue and apprehend, beyond the limits of the county where the offence shall have been committed, any person guilty of stealing any horse, mare or mule; which reward shall be paid, on conviction of the thief, by the county in which the offence was committed: *provided*, that said reward shall not disqualify the person entitled thereto from being a witness.

Approved February 26, 1845.

[AMENDATORY to Chapter 27 of the Revised Statutes.]

An Act to provide for the Apprehension of Fugitives from Justice.

(61.) SEC. I. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That it shall be lawful for the county commissioners' courts of the several counties in this state, by an order to be entered upon their records, to fix upon a sum not exceeding one hundred dollars, as a reward to be paid to any person who shall hereafter pursue and apprehend, beyond the limits of the county where the offence shall have been committed, any person guilty of any felony or other high crime, which reward shall be paid by the county where the offence was committed, on

the conviction of the criminal: *provided, nevertheless*, that said reward shall not disqualify the person entitled thereto from being a witness.

(62.) SEC. II. It shall be lawful for the county commissioners' courts of the several counties in this state, to enter an order upon their records, allowing to any person or persons, who shall have aided or assisted in the pursuit or arrest of any person or persons suspected or accused of any felony, or other high crime, committed in their county, such reasonable sum as said county commissioners shall deem just, to defray the expenses of the person or persons in aiding or assisting in the pursuit or arrest of such offender or offenders, in making such pursuit or arrest; which sum so allowed, shall be paid out of the county treasury, in the same manner that other county expenses are paid

Approved February 27, 1847.

COUNTY COURTS.

An Act conferring additional powers and jurisdiction on the County Courts. In force February 11, 1853.

SECTION 1. *Be it enacted by the people of the State of Illinois,* In force February 11, 1853. *represented in the General Assembly,* That in addition to the powers and jurisdiction vested in the county courts by the thirteenth section of the act entitled an act establishing county courts and providing for the election of justices of the peace and constables; and for other purposes, in all counties wherein township organization has been or may hereafter be adopted and in force, the said court shall have power to issue writs of *ad quod damnum*, and is hereby vested with jurisdiction over all proceedings had therein; which proceedings shall be had in manner and form and in accordance with the provisions of the seventy-first chapter of the Revised Statutes of 1845, and the orders and judgments of said court therein made shall have the same force and effect as the orders and judgments of the county courts in like cases in counties where township organization has not been adopted.

§ 2. Said writ may be issued and proceedings had at any regular term of said court holden for probate or county purposes. Writ issued

§ 3. This act to take effect from and after its passage.

Approved February 11, 1853.

An Act to amend an act entitled "An Act establishing County Courts, and providing for the election of Justices of the Peace, and Constables, and for other purposes."

SECTION 1. *Be it enacted by the People of the State of Illinois,* Terms of the county court. *represented in the General Assembly,* That in all counties in this state which have adopted or shall hereafter adopt township organization, the December, March, June and September terms of the county courts shall commence on the first Mondays of said months respectively.

Approved February 15, 1855.

COUNTY TREASURERS AND COUNTY FUNDS.

(From chapter 28 of the Revised Statutes.)

Election of county treasurer. SECTION 1. There shall be elected in each county of this state, a county treasurer, who shall hold his office four years and until his successor is elected and qualified. In counties hereafter to be organized, they shall be elected at the first election of county commissioners, and in like manner every four years thereafter. In counties now existing, they shall be elected at the periods and in the order of time by law established.

Oath of office. SEC. 2. Each county treasurer, previous to entering on the duties of his office, shall take and subscribe the following oath, to wit:

Form of oath. "I, A. B., treasurer of the county of —, in the State of Illinois, do solemnly swear, (or affirm) that I will honestly and faithfully pay over to the proper officers and individuals authorized by law to receive the same, any and all current money, and other funds that may come into my possession by virtue of my office as treasurer of the county of —, and that I will not, directly or indirectly, exchange, lend or use any portion thereof, for the purpose of speculation, or will I appropriate or apply any portion thereof, to my own use or benefit, or for the use or benefit of another, and that I will faithfully and impartially, and to the best of my skill and judgment, perform the duties required of me by law as treasurer of the county of —. A. B.
Sworn to and subscribed before me this — day of —, 18—.

C. D., Justice of the peace for — county."

To give bond. SEC. 3. Each county treasurer, before he enters upon the duties of his office, shall also execute a bond, in such penalty and with such security as the county commissioners shall deem sufficient; which bond shall be in substance in the following form, to wit:

Form of bond. "Know all men by these presents, that we, A. B., principal, and C. D., and E. F., securities, all of the county of — and state of Illinois, are held and firmly bound to the people of the state of Illinois, in the penal sum of — dollars, for the payment of which well and truly to be made, we bind ourselves, each of us, our heirs, executors and administrators, firmly by these presents: signed with our hands, and sealed with our seals. Dated at —, the — day of —, 18. The condition of the above bond is such, that if the above bounden A. B. shall perform all the duties required by law to be performed by him, as treasurer of the said county of — in the time and manner prescribed by law; and when he shall be succeeded in office, shall surrender and deliver over to his successor in office, all books, papers, moneys and other things belonging to said county, and appertaining to his said office, then the above bond to be void, otherwise to remain in full force.

Signed, sealed, and delivered }
in presence of G. H." }

A. B., [SEAL.]
C. D., [SEAL.]
E. F., [SEAL.]

Treasurer to keep book. SEC. 4. The county treasurers of the several counties in this state, shall each of them keep a book, in which they shall keep a regular, just and true account of all moneys and revenues received by them respectively, stating therein particularly in what kind of funds each particular sum was received, whether in gold, silver, county orders or any other funds authorized to be received as revenue, by the laws of this state. They shall also keep a regular, just, and true account of the time when, of whom, and on what

account each particular sum in money, or other funds, may have been received by them.

SEC. 5. They shall also keep a regular, just and true account of all moneys and funds paid out by them agreeably to law, stating therein particularly on what account each particular sum was paid out, to whom paid, the particular kind of money or funds paid out to each individual, and the time when such payment was made. The books and accounts aforesaid to be free for the inspection of any individual who may wish to examine the same. Account of fund paid out.

SEC. 6. No money, county orders or other funds shall hereafter be paid out of any county treasury in this state, except in accordance with an order or decree of the county commissioners' courts respectively, or by virtue of a law specifically directing such payment to be made. Pay out on orders only.

SEC. 7. It shall be the duty of the treasurers of each and every county to report to the county commissioners' courts of their respective counties, at the regular terms of said courts, the amount of money, county orders, or other public funds, in their possession; also, the amount of money, county orders and other public funds received by them since their last reports. They shall also state in said reports, the amount they may have received from each and every source of revenue, by whom, on what account, in what kind of funds, and at what time the same may have been paid into the treasury. The said treasurers shall also report to the county commissioners' courts of their respective counties, at the regular terms of said courts, regular, just and true accounts of all payments out of the treasury, stating particularly at what time, on what account, in what kind of funds, and to whom each particular sum was paid out. To make report.

SEC. 8. The clerks of the county commissioners' courts of the several counties in this state respectively, shall number, file, and carefully preserve the reports mentioned in the eighth section of this chapter and the said reports shall be free for the inspection of any individual who may wish to examine the same. Reports to be filed.

SEC. 9. No clerk of any county commissioner's court in this state shall receive any money claimed by or due to either of the counties of this state, from any source whatever, whether on account of revenue, costs or fines, or from merchants, grocers, tavernkeepers, showmen, peddlers, or ferry licenses, or from any other source whatever.

SEC. 10. No claim of any county, whether for revenue, costs or fines, or for merchants, grocers, tavernkeepers, showmen, peddlers or ferry licenses, or from any other source whatever, shall be considered as having been paid and satisfied until the money or other funds shall have been paid to the treasurer of such county, and his duplicate receipts had therefor, which receipts shall specify the kind of money or other funds in which the payments shall have been made; one of which receipts shall be presented to the clerk of the county commissioners' court of the proper county, which All moneys paid to treasurer.

said clerk shall number, file and carefully preserve the same in his office, which aforesaid duplicate receipts, it shall be the duty of the treasurer to give to any person who shall pay into the county treasury any money or other funds as aforesaid.

Settlement of
treasurer.

SEC. 11. The county commissioners' court of each and every county in this state shall, at their June and December terms in each year, settle with their county treasurer, and count the funds then in the treasury of their county; and the clerk of said court shall then enter on the records of said court the amount and kind of funds found to be in the treasury at the time.

If defaulter.

SEC. 12. Should the treasurer, at any such settlement, prove a defaulter, and be actually in arrears with the county, the county commissioners shall immediately dismiss him from office, and commence suit against him on his official bond.

Embezzlement of
public funds de-
clared felony.

SEC. 13. If any state or county officer, school commissioner, or any other person charged by law with having the possession and the safe-keeping of any public money, auditor's warrants, county orders or other funds belonging to the state, or to any county in the state, or in any way pertaining to the school funds or any county or township therein, shall convert to his own use, in any way whatever, or shall use, by way of investment in any kind of property or merchandize, or for his own use shall loan, with or without interest, any portion of the public moneys, auditor's warrants, county orders, or any other funds intrusted to him for safe keeping, disbursement, transfer or for any other purpose, every such act shall be deemed and adjudged an embezzlement of so much of said moneys, auditor's warrants, county orders or other funds, as shall be thus taken, converted, invested, used or loaned, which is hereby declared to be a felony. Any officer of the state, or of any county, or of any township, and all persons advising or participating in such act, being convicted thereof before any court of this state of competent jurisdiction, shall, in case the sum so embezzled, taken, converted, invested, used or loaned, be less than fifty dollars, be fined in a sum not exceeding two hundred dollars, or imprisoned in the jail of the proper county not exceeding three months, or both, at the discretion of the court before which such conviction shall be had; and in case the sum so embezzled, taken, converted, invested, used or loaned, shall exceed fifty dollars, then the said officer or other person so convicted, shall be fined in a sum double the amount of the sum so embezzled, taken, converted, invested, used or loaned, and confined in the penitentiary not exceeding ten years, nor less than one year: *provided, however*, that this chapter shall not be so construed as to extend to any public officer or agent who shall loan any school or other fund in pursuance of any of the laws of this state.

Punishment.

Statement to be
published.

SEC. 14. The county commissioners' courts of this state shall publish annually at their June terms, in a newspaper, if one is printed in the county, a full and perfect statement of the financial affairs of their respective counties, and if a newspaper is not pub-

lished in said county, then the clerks of said courts shall post the same up in their respective offices, which shall be kept there for the inspection of all persons, at all seasonable hours, who may desire to examine the same.

SEC. 15. The county commissioners' court of any county in this state may at any time when any two of them think it for the interests of the people of their county so to do, call through their clerk upon the treasurer of their county for a settlement, and should said treasurer neglect or refuse to appear and make settlement as notified to do, said commissioners shall declare his office vacant, and proceed upon his bond as required to do in this chapter. Settlement may be called for.

SEC. 16. Should the county commissioners' court of any county in this state be of opinion that the treasurer of their county has at any time used the funds of said county when current, and replaced the same in depreciated funds, they shall have the power to examine said treasurer under oath as touching said transaction, and if it shall appear that he has parted with any current funds belonging to the county, and replaced the same with funds less valuable, they shall immediately dismiss him from office. Depreciated funds.

SEC. 17. Should any county treasurer be dismissed from office pursuant to the provisions of this chapter, it shall be the duty of the county commissioners' court to appoint some suitable person to fill the vacancy so occasioned, and the person so appointed, shall give bond and security as now required by law of county treasurers, and shall perform all the duties enjoined upon the county treasurer until one is elected and qualified. Vacancy how filled.

SEC. 18. If any clerk, county commissioner or treasurer of any county in this state, shall neglect or refuse to perform any of the duties required of them by this chapter, they shall severally forfeit a sum of not less than fifty dollars, and not exceeding one thousand dollars, according to the nature and aggravation of the offence, to be recovered by indictment in the circuit court of the proper county, or by action of debt by any person who shall sue therefor, one-half to the person suing, and the other half to the proper county. Penalty for neglect of duty

SEC. 19. Whenever any sheriff, coroner, constable, justice of the peace or probate justice of the peace in this state, shall, after proper demand made, fail, neglect or refuse to pay over any sum or sums of money collected or received by such officer, in and by virtue of his office, his said office shall be forfeited and vacated. Failure to pay over funds

SEC. 20. Whenever in pursuance of the laws of this state, any judgment shall be had or taken, against any sheriff, coroner, constable, justice of the peace, or probate justice of the peace, for any failure, neglect or refusal of such officer, to pay over any sum or sums of money collected or received by him, in and by virtue of his office, and it shall appear to the satisfaction of the court, that proper demand for the same has been made, it shall be the duty of the court, or justice of the peace before whom such judgment is had or taken, further to adjudge and decree that the office of such

officer, so failing, neglecting or refusing, as aforesaid, is forfeited and vacated, and such vacancy shall be filled as in other cases of vacancy, as is now provided by law.

Auditor's warrants to pay taxes at par.

SEC. 21. The collectors of the state revenue in the several counties in this state, shall receive auditor's warrants in payment of any or all taxes due the state, in their respective counties, at par, and they shall not be permitted to take, buy, share or receive, directly or indirectly, by themselves or agent, any auditor's warrant or warrants, at less than the full sum due thereon, to the holder of such warrant or warrants.

Penalty to discount warrants.

SEC. 22. For any violation of the provisions of the preceding section by any collector or collectors aforesaid, he or they shall be liable to double the amount so made by purchasing or sharing said warrants, at less than their face, in an action of debt, before any justice of the peace or court of record of the proper county. One half of all sums so collected to go to the person complaining, and the other half to go to, and form a part of the school fund of the county where such collector may reside.

Indorsement on county order.

SEC. 23. It shall be the duty of the county treasurer, of any county in this state, whenever any county order is presented for payment, to indorse on the back of any such order, the time when the same was presented for payment; and it shall also be the duty of the said treasurer, to set down in a book to be kept by him for that purpose, the amount and date of all such county orders, to whom made payable, and the time when presented to the said treasurer for payment; and all county orders shall be paid according to their original dates; and it shall be the duty of the county treasurer, whenever any money comes to his hands, to set apart the amount of the order presented as aforesaid, which money shall be kept by the treasurer until called for; and the said treasurer, when he goes out of office, shall deliver said book, containing a list of the county orders so presented, to his successor, who shall in all things act as though the entries of orders were made by himself.

Orders paid according to date.

Approved March 3, 1845.

In force April 18, 1861.

Treasurers to be elected in November, 1851, and biennially thereafter.

An Act to amend the several acts relating to the election of County Treasurer.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That county treasurers shall hereafter be elected on the first Tuesday after the first Monday in November, A. D. eighteen hundred and fifty-one, and every two years thereafter.

Acts repealed.

§ 2. So much of any and all laws now in force as provides that county treasurers shall hold their offices for the term of four years, is hereby repealed.

Approved Feb. 17, 1851.

DOGS. 1

An Act to amend chapter 30 of the Revised Statutes of 1845.

In force February 20, 1861.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* The several county courts or boards of supervisors in the counties of this state are hereby authorized and empowered to make and ordain, within their several counties, such taxes or other regulations as they may deem advisable in relation to dogs. And after such orders or regulations shall be so made, any owner of a dog or dogs, who shall refuse or neglect to comply therewith, shall not recover for any killing or injury done to such dog or dogs, and shall also be liable, for such non-compliance, to a fine of ten dollars, to be recovered by indictment or action of debt, in the name of the county authorities, before any justice of the peace of the county; and any net moneys arising in any county, under the provisions of this act, may be set apart for the benefit of either the road, school or general fund of such county.

County courts and boards of supervisors authorized to tax dogs.

Penalty where owner refuses to obey regulations. Fines, how appropriated.

§ 2. This act shall be in force from and after its passage.

Approved February 20, 1861.

ESTRAYS.

An Act to amend chapter thirty-nine of the Revised Statutes, entitled "Estrays."

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the counties which have adopted or shall hereafter adopt township organization, the town clerk of every town thereof shall provide a book for the purpose of registering the mark, brand and color of any animals enumerated in chapter fifty [thirty-nine] of the revised statutes, taken up as an estray, which book shall be open at all times to inspection by all persons interested therein, and shall be deemed a part of the records of said town.

Town clerks to register brands.

§ 2. Any person who shall take up any estray according to the provisions of the act to which this is an amendment, shall cause to be registered in the book provided in the foregoing act, the marks, brand and color of said estray, within five days from the time of such taking up.

Animals to be registered in five days.

§ 3. This act to take effect and be in force from and after its passage.

Approved February 15, 1855.

An Act regulating the publication of Estray Notices.

In force February 21, 1861.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the estray notices now required by law to be published in some newspaper designated by the Governor, in the city of Springfield, shall hereafter be published

Estray notices to be published likewise in county newspaper.

lished also in some newspaper printed in the county in which said estray may be taken up; said newspaper to be designated by the county clerk of said county; and that hereafter the fee paid to the newspaper in Springfield for said publication be fifty cents, for each such notice, and the fee paid to the newspaper selected by the county clerk for each such publication, shall be fifty cents.¹

§ 2. This act shall take effect from and after its passage.

Approved February 21, 1861.

HIGHWAYS.

Plank, Gravel and Macadamized Roads.

By an Act approved February 21, 1859, entitled "An Act to provide for constructing, maintaining and keeping in repair plank, gravel and macadamized roads or pikes by a general law," after providing for the organization of companies for the purpose of constructing such roads, certain powers are given to boards of supervisors and commissioners of highways, contained in the following section :

Plank road company may construct road on state or county road, by agreement with supervisors or commissioners of highways.

§ 8. Such company may locate and construct said road or pike, or any part thereof, upon any state or county road, by an agreement with the county court, or in counties adopting the township organization, with the board of supervisors or commissioners of highways, in which said state or county road may be situated, or upon any street or alley or public ground, within the limits of any incorporate town or city, by an agreement with the corporate authorities of such town or city; which said agreement with such county court, board of supervisors, commissioners of highways, or corporate authorities, shall be in writing, and filed and recorded in the county clerk's office of the proper county; or may locate or construct such road or pike over any lands, owned and occupied by the state, and over any lands owned by any individual or corporation, by voluntary cession or by purchase. It shall be lawful for such company to appropriate and use so much of said land, not exceeding one hundred feet in width, as shall be necessary for the proper construction of such road or pike, on complying with the six following sections :²

In force Feb. 22, 1861. An Act to establish certain rules of evidence as to Highways, in Counties adopting township organization.

Board of supervisors may cause old roads to be resurveyed.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That it shall be lawful for the board of supervisors in any county to empower and authorize the county surveyor of said county, under the direction of the highway commissioners of each town, to survey, locate and plat the public highways of each town; and when such plat shall have been completed, and approved by the highway commissioners, it shall be filed in the office of said town clerk, together with the minutes and

Plat to be filed.

(1) For provisions in full concerning ESTRAYS, see Appendix, p. 246.
(2) *Sess. Laws*, 859, p. 1561.

reports of such survey, and be carefully kept by such town clerk, Expense how
as a part of his official records—the expenses of such proceedings paid.
to be paid out of the road fund, by each town.

§ 2. The said plat, minutes and report, or a certified copy of Survey to be
the same, under hand and seal of the town clerk, shall be *prima facie* prima facie evi-
facie evidence that the road or roads therein described have been dence.
lawfully constituted a public highway.

§ 3. The provisions of this act shall apply to ratify and confirm Former proceed-
all proceedings heretofore had by any county or commissioners of ings legalized.
highways and surveyor, in accordance with the provisions of the
first section of this act, or by order of the town authorities.

§ 4. This act shall take effect and be in force from and after
its passage.

Approved February 22, 1861.

An Act to amend the general Plank Road Law.

SECTION 1. *Be it enacted by the People of the State of Illinois,* Railroads author-
represented in the General Assembly: That whenever it shall be ized to negotiate
necessary for the construction of any railroad on the line of any for construction
plank road now constructed or hereafter to be constructed by any on line of plank
company organized under the provisions of said law, said plank road.
road company are hereby authorized to negotiate and transfer such
plank road to said railroad company, upon the conditions following:
that before said transfer shall be made, the vote of a majority of
the stockholders shall be given in favor of such transfer, and fur-
ther, that the consent of the county court of the county in which Consent of board
said plank road is situated, or board of supervisors shall first [be] of supervisors to
granted, and entered upon the records of said court. be obtained.

§ 2. This act to take effect from and after its passage.

Approved February 12, 1855.

LAW OF THE ROAD.

(From Chapter 93 of the Revised Statutes, title "Roads.")

SECTION 1. Whenever any persons traveling with any car- Carriages turn to
riages, shall meet on any turnpike road or public highway in this the right.
state, the persons so meeting, shall seasonably turn their carriages
to the right of the center of the road, so as to permit each carriage
to pass without interfering or interrupting, under the penalty of Penalty.
five dollars for every neglect or offence, to be recovered by the
party injured: *provided*, this section shall not be construed to
apply to any case, unless some injury to persons or property shall Not apply unless
occur by the driver of the carriage or wagon refusing to turn to injury.
the right of the beaten track; nor shall it be construed to extend
to a case where it is impracticable, from the nature of the ground,
for the driver of the carriage or wagon to turn to the right of the
beaten track.

§ 2. No person owning any carriage, running or traveling upon Drunken driver
any road in this state, for the conveyance of passengers, shall forbidden.

	employ or continue in employment, any person to drive such carriage, who is addicted to drunkenness or the excessive use of spirituous liquors; and if any such owner shall violate the provisions of this section, after he shall have had notice and reasonable proof that such driver is addicted to drunkenness, he shall forfeit at the rate of five dollars per day, for all the time during which he shall thereafter have kept any such driver in his employment, to be sued for by any person, and collected in any court having competent jurisdiction. The penalty, when recovered, shall be for the use of the poor of such county, except that the court in which the recovery shall be had, may allow a portion of said penalty, not exceeding twenty-five dollars, to be retained by such complainant as a compensation for his services and expenses.
Penalty for employing him.	
Use of penalty.	
Drunken driver to be dismissed	§ 3. If any driver, whilst actually employed in driving any such carriage, shall be guilty of intoxication to such a degree as to endanger the safety of the passengers in the carriage, it shall be the duty of the owner of such carriage, on receiving written notice of the fact, signed by any one of said passengers, and certified by him on oath, forthwith to discharge such driver from his employment; and every such owner who shall retain or have in his employ, within three months after the receipt of such notice, any driver who shall have been so intoxicated, shall forfeit at the rate of five dollars per day for the time during which he shall keep any such driver in his employment after receiving such notice, to be sued for and applied as directed in the last preceding section.
Penalty for retaining him.	
Running horses forbidden.	§ 4. No person driving any carriage upon any turnpike road or public highway within this state, with or without passengers therein, shall run his horses or carriage, or permit the same to run, upon any occasion, or for any purpose whatever; and every person who shall offend against the provisions of this section, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined, not exceeding one hundred dollars, or imprisoned, not exceeding sixty days, at the discretion of the court.
Horses not to be left unhitched.	§ 5. It shall not be lawful for the driver of any carriage used for the purpose of conveying passengers for hire, to leave the horses attached thereto, while passengers remain therein, without first making such horses fast with a sufficient halter, rope or chain, or by placing the lines in the hands of some other person, so as to prevent their running; and if any such driver shall offend against the provisions of this section, he shall forfeit for the use of the poor, the sum of twenty dollars, to be recovered by action to be commenced within six months; and unless the amount of such recovery be paid forthwith, execution shall be immediately issued therefor.
Penalty.	
Owner liable for damage.	§ 6. The owners of every carriage running upon any turnpike road or public highway for the conveyance of passengers, shall be liable jointly and severally, to the party injured, in all cases, for all injuries and damages done by any person in the employment of such owners as a driver, while driving such carriage, to any

person, or to the property of any person; and that, whenever the act occasioning such injury or damage be willful, negligent or otherwise, in the same manner as such driver would be liable. Any driver of any mail stage coach, or any other vehicle for the conveyance of passengers, willfully offending against the provisions of this chapter shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be imprisoned, not exceeding four months, or fined, not exceeding three hundred dollars. Penalty of offending driver.

§ 7. The term "carriage," as used in this chapter, shall be construed to include stage coaches, wagons, carts, sleighs, sleds, and every other carriage or vehicle used for the transportation of passengers and goods, or either of them. Meaning of "carriage."

§ 8. Nothing contained in this chapter shall interfere with, or affect any law concerning hackney coaches or carriages in any of the cities of this state, nor interfere with, nor affect the laws or ordinances of any such city for the licensing or regulating such coaches or carriages. Justices of the peace shall have jurisdiction in all cases arising under this chapter, where the penalty does not exceed one hundred dollars. Hackney coach, law not changed. Justices' jurisdiction.

§ 9. All roads within this state, which have been laid out in pursuance of any law of this state, or of the late territory of Illinois, and which have not been vacated in pursuance of law, are hereby declared to be public highways. What are public highways.

* * * * *

DIVISION VII.

LOCAL AND SPECIAL PROVISIONS.

In force February 19, 1859. An Act to enable the Board of Supervisors of Boone County to levy an additional Tax for certain purposes therein named.

Tax.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the board of supervisors of the county of Boone may, at their annual meeting, levy a tax, not exceeding two mills on the dollar, over and above the amount now allowed by law for county purposes; which shall constitute a fund, separate from the county revenue, and shall be appropriated either to the payment of the outstanding bonds of said county or the purchase of a poor farm and the erection of suitable buildings thereon, and for no other purpose, and shall cease when the afore-said objects have been accomplished.

Special tax.

§ 2. Said special tax shall be levied and collected in the same manner as other tax is.

§ 3. This act shall take effect from and after its passage.

Approved February 24, 1859.

In force February 18, 1859. An Act empowering the Board of Supervisors of Jo Daviess County to levy certain Taxes therein named.

Authorized to levy tax for bridges.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the people of the county of Jo Daviess, by their board of supervisors, be and are hereby authorized to levy a tax, of one mill upon the dollar, upon all taxable property in said county, for the purpose of erecting bridges and maintaining same in said county.

Taxes to liquidate county debt

§ 2. *Be it also enacted,* That the people of said county of Jo Daviess, by their board of supervisors, be and [are] hereby authorized and empowered to levy a further tax, of two mills upon the dollar, upon all taxable property, to be used as a sinking fund, for the purpose of liquidating the indebtedness of said county.

§ 3. This act shall be in force from and after its passage.

Approved February 18, 1859.

In force February 5, 1857.

Certain roads declared highways.

An Act to legalize certain Roads in certain towns therein named.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That all roads in the townships of Belvidere and Flora, county of Boone, and state of Illinois, surveyed, located, platted by and under the direction of the highway commissioners of said townships, in the year eighteen hundred fifty-six, are hereby declared public highways.

§ 2. And that the record kept in the office of the clerks of said towns shall be evidence of the locations and establishing of said roads or highways in all courts having jurisdiction of subject matters that may at any time or in any manner arise in reference to the said highways. Record to be evidence.

§ 3. And that all roads and parts of roads, in said towns, heretofore declared vacated by said commissioners, be and the same are hereby vacated. Roads vacated

§ 4. And that said roads established by this act shall be subject to alterations, relocations and vacations by the highway commissioners of said towns, as other roads now are or may hereafter be. May be relocated.

§ 5. This act to take effect from and after its passage.

Approved February 5, 1857.

An Act to legalize the acts of the Commissioners of Highways in the town of Bloomingdale, and county of Du Page. In force April 20, 1857.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the acts of the commissioners of highways for the town of Bloomingdale, in the county of Du Page, in surveying, laying out and establishing roads and public highways in said town, from April 17th, 1851, to February 12th, 1853, be and the same are hereby legalized and confirmed, so far as they have been opened and worked; and all roads surveyed, laid out and opened by them are hereby declared public highways.

Approved February 16, 1857.

An Act to authorize the Commissioners of Highways of the town of Wayne, in Du Page county, to alter the route of a certain state road. In force February 16, 1857.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the commissioners of highways of the town of Wayne, in Du Page county, are hereby authorized to alter the route of so much of the state road located through said town in the year 1849, by Elijah Wilcox, Augustus Adams and Luther Herrick, commissioners, as runs across section five, in said town, whenever such alteration shall be petitioned for in the manner required by sections one and two of article four of the act to provide for township organization. Commissioners' duty.

§ 2. The said commissioners of highways, in the exercise of the authority conferred by this act, shall proceed in the same manner as is required by the laws now in force relative to the alteration of other roads, and appeals may be taken and prosecuted from orders made by them, either in relation to the alteration of said road or the assessment of damages, as in other cases, and the supervisors to whom such appeals are taken shall be governed by the laws now in force relative to road appeals. How proceed.

§ 3. This act to take effect from and after its passage.

Approved February 16, 1857.

In force Feb. 12, 1853. An Act entitled "An Act to prevent Sheep and Swine from running at large in the county of Du Page."

Penalty.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That from and after the first day of March next, it shall not be lawful for any person or persons, possessor or possessors of any sheep or swine, to allow them to run at large within the county of Du Page; and if any person or persons, being the owner or owners, possessor or possessors of any sheep, lamb or lambs, hog or hogs, shoat or shoats, pig or pigs, shall permit them or any of them to run at large within said county of Du Page, such person or persons shall forfeit and pay the sum of five dollars to any person or persons making complaint before any justice of the peace in the state of Illinois, to be collected as in action for debt before such justice of the peace, with the costs of the suit.

Approved February 12, 1853.

In force Jan. 27, 1853. An Act to prevent Sheep and Swine from running at large in Henry, Will and Livingston Counties.

Penalty

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That from and after the first day of March next, it shall not be lawful for any person or persons, possessor or possessors of any sheep and swine, to allow them to run at large within the counties of Henry, Will, and Livingston and Lake; and if any person or persons residing within said counties of Henry, Will, and Livingston and Lake, being the owner or owners, possessor or possessors of any sheep, hog or hogs, shoat or shoats, pig or pigs, shall permit them to run at large within said counties as aforesaid, such person or persons shall forfeit and pay the sum of five dollars per head to any person or persons making complaint before any justice of the peace in and for said counties, to be collected as in action for debt before such justice of the peace, with the costs of suit.

Approved January 27, 1853.

In force Feb. 16, 1859. An Act to amend an act entitled "An Act to prevent Sheep and Swine from running at large in Henry, Will and Livingston Counties," approved January 27th, 1853, so as to extend the provisions thereof to the County of Lake.

Act extended.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the provisions of the act entitled "An act to prevent sheep and swine from running at large in Henry, Will and Livingston counties," approved January 27th, 1853, be and the same are hereby extended to the county of Lake, to all intents and purposes, the same and as effectually as if said county had been originally embraced in the title of the above mentioned act.

§ 2. This act shall take effect and be in force from and after its passage.

Approved February 19, 1859.

An Act to legalize the acts of the Commissioners of Highways for the county of Iroquois, for the year 1857. In force Feb. 21, 1859.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the acts of the commissioners of highways, within and for the county of Iroquois, for the year A. D. 1857, be and the same are hereby legalized; and that all roads located by said commissioners shall be deemed as lawful as if said commissioners had given public notice, as is now required by law; and that in all cases hereafter, that petitioners for the location of any new road or the alteration of an old one, that commissioners of highways require the petitioners, as aforesaid, to deposit with them a sufficient amount to defray the expenses of the view and survey of the proposed route; and if the prayer of the petition shall be granted, then and in that case said money shall be refunded immediately to the petitioners, and the township shall defray all the expenses for the services aforesaid: *provided*, the provisions of this act shall not apply to the town of Loda, in said county. Acts of the commissioners of highways legalized.
Petitioners to deposit sufficient amount to defray expenses of view.
Proviso.

§ 2. This act to take effect and be in force from and after its passage.

Approved February 21, 1859.

An Act to amend the Township Organization Law.

In force March 1, 1854.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the commissioners of highways in the several towns in the counties of Kane and De Kalb be and they are hereby authorized and empowered to alter, vacate or relocate any and all state roads that have been or may hereafter be located in their respective towns, and shall have the same power and control over state roads that they now or hereafter may have over other roads under the township organization law. Vacate or relocate state roads.

§ 2. That sheep be permitted to run at large in Will county, unless by vote of the people, at their town meeting in any town, it shall be otherwise determined. Sheep.

§ 3. This act to take effect and be in force from and after its passage.

Approved March 1, 1854.

An Act to repeal an Act entitled "An Act to prevent Swine and Sheep from running at large in Iroquois county, and for establishing and maintaining pounds in said county." In force February 22, 1861.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the above mentioned act, which was approved February 10th, A. D. 1853, be and the same is hereby repealed.

§ 2. The said county of Iroquois shall be governed by the act establishing township organization, so far as the regulation concerning the running at large of animals is concerned.

§ 3. This act is to be in force from and after its passage.

Approved February 22, 1861.

In force February 20, 1861. An Act to require each town in Kankakee county to take care of its poor.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the several towns, now created or that may be hereafter created in the county of Kankakee, be and they hereby are empowered and required to support all paupers residing within their respective limits, out of the treasury thereof.

Duties of overseers of the poor.

§ 2. That the overseers of the poor of the towns aforesaid shall take charge of, maintain and support the poor of their respective towns, in manner as is now or hereafter may be provided by law; and all expenses incurred for such maintenance and support shall be considered a town charge, and it shall be the duty of said overseers to present to the board of town auditors of their respective towns, at each regular annual meeting thereof, a true account of all expenditures incurred under the provisions of this act, which shall be audited and paid as other town charges are audited and paid.

Non-resident paupers.

§ 3. If any person shall become chargeable, in any town of said county, in which he or she did not reside at the commencement of the thirty days immediately preceding his or her becoming so chargeable, he or she shall be taken care of by the overseers of the poor of such town; and if such poor person was a resident of any other town of said county, within the thirty days aforesaid, then the overseer of the poor of the town having such poor person in charge shall give notice to the overseer of the poor where such pauper resides as aforesaid, stating that such pauper became chargeable as a pauper, and requesting said overseer to remove said pauper forthwith, and pay the expenses incurred in taking care of him or her.

Revised Statutes, chapter eighty

§ 4. That the provisions of sections fourteen, fifteen and sixteen, of chapter eighty, of the Revised Statutes, entitled "Paupers," shall apply to and operate, as between the several towns of said county, in the same manner as they do between the several counties of this state. And if any person shall become chargeable in any town of said county, who did not reside in said county at the commencement of the thirty days as aforesaid, then the overseer of the poor, having such pauper in charge, shall give notice thereof to the authorities of the proper county, as in other cases; and the expenses of taking care of such paupers, when received from such foreign county, shall be paid into the treasury of the proper township.

County poor house.

§ 5. All paupers at the county poor house shall, on the passage of this act, be taken by the keeper of the poor house to the several towns to which they belong, and delivered to the overseers thereof, and to be by them supported, as provided by this act.

§ 6. The electors of the several towns of said county, at their annual town meetings, may prescribe such rules and regulations, for the support of paupers of their respective towns, as they may deem most expedient.

§ 7. This act to take effect immediately.

Approved February 20, 1861.

An Act to prevent Sheep and Swine from running at large within the county of Mason. In force April 1, 1857.

SECTION 1. *Be it enacted by the People of the State of Illinois,* Not lawful for sheep and swine to run at large.
represented in the General Assembly, That from and after the first day of April, A. D. 1857, it shall not be lawful for any person or persons, possessor or possessors of any sheep, hog or hogs, shoat or shoats, pig or pigs, to allow the same to run at large within the county of Mason; and if any person or persons, being the owner or owners, possessor or possessors of any such sheep, hog or hogs, shoat or shoats, pig or pigs, shall permit the same to run at large within the county aforesaid, such person or persons, possessor or possessors shall forfeit and pay the sum of five dollars per head to any person or persons making complaint before any justice of the peace in and for said county, to be collected as in an action for debt before such justice of the peace, together with the costs of suit, and shall also pay all damage resulting from the running at large of such sheep or swine to the person or persons so damaged; *pro-Provido.*
vided, however, said sheep, hog or hogs, shoat or shoats, pig or pigs, shall not be considered as running at large while they remain upon the premises of the owner or owners, possessor or possessors of the same, not occupied by any other person or persons.

§ 2. The provisions and penalties of this act shall not apply to the owner or owners of sheep or swine running at large upon the unoccupied lands located in the Illinois river bottoms, the Sangamon river bottoms or the Salt creek bottoms, within the county of Mason aforesaid; and this act shall not be so construed as to prevent or in anywise interfere with persons driving sheep or swine to or from the market where such sheep or swine may have been bought or sold.

§ 3. This act shall be in force from and after the first day of April next.

Approved February 14, 1857.

An Act to legalize a certain record of the county commissioners' court of Will county, establishing a certain road therein named. In force February 18, 1857.

SECTION 1. *Be it enacted by the people of the state of Illinois,* Report of survey.
represented in the General Assembly, That the record of a certain proceeding in the county commissioner's court of the county of Will, approving the report of a survey of a road from section number two, town thirty-seven, range nine east of the third principal meridian, in the county of Will, to intersect the Naperville and Plainfield road, as the same is now recorded, be and the same is hereby established and confirmed and the said road declared to be Confirmed.
 legally layed, according to the said survey; and the board of supervisors are hereby authorized to direct the same to be opened whenever the public interest shall require.

Approved February 18, 1857.

In force February 18, 1857.

An Act to authorize the commissioners of highways, in the respective towns, in the county of Peoria, to alter, change, relocate or discontinue certain roads therein named, and also for the survey and location of a certain road therein named.

Commissioners of highways.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the commissioners of highways in any town in the county of Peoria are hereby authorized and empowered to change, alter, relocate or discontinue the Peoria and Rock Island state road or the road from Brenfield to Rochester: *provided*, they do not materially increase the distance of travel on said road or roads or do not place said road or roads on worse grounds than now occupied: *and, provided*, they do not discontinue said road unless a majority of the legal voters residing within one and a half miles of said road, by petition requesting the same to be done.

Not to increase distance.

* * * * *

In force February 18, 1857.

An act to prevent sheep and swine from running at large in the counties of Stark, Putnam and McLean.

Unlawful to run at large.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That it shall not be lawful for any person or persons, possessor or possessors of any sheep or sheep, or hog or hogs, shoat or shoats, pig or pigs, to allow the same to run at large within the counties of Stark, Putnam and McLean; and if any person or persons, residing in said counties of Stark, Putnam and McLean, being the owner or owners, possessor or possessors of any such sheep or sheep, hog or hogs, shoat or shoats, pig or pigs, shall permit the same to run at large within said counties as aforesaid, such person or persons, possessor or possessors, shall forfeit and pay the sum of five dollars per head to any person or persons making complaint before any justice of the peace in and for said counties, to be collected as in an action for debt, before such justice of the peace, together with the costs of suit: *provided, however*, said sheep or sheep, hog or hogs, shoat or shoats, pig or pigs, shall not be considered as running at large while they remain upon the premises of the owner or owners, possessor or possessors of the same, not occupied by any other person or persons.

Proviso.

Certain laws inapplicable.

§ 2. That so much of the sixth clause of the fourth section of the third article of an act entitled "An act to provide for township organization," approved February 17, 1851, as gives to the electors of each town in counties adopting township organization the power, at their annual town meeting, "to determine the time and manner in which hogs and sheep shall be permitted to run at large," be and the same is hereby declared inapplicable to said counties of Stark Putnam and McLean, whether the same are now or may hereafter be organized under the provisions of said act.

§ 3. This act shall take effect and be in force from and after the first day of April, 1855.

Approved February 14, 1855.

COOK COUNTY.

An Act to amend an act entitled "An act to provide for township organization." In force February 21, 1859.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the fourth section of article sixteenth of an act to provide for township organization, approved February 17, 1851, so far as is applicable to the county of Cook, be so amended that it shall require two-thirds of all the supervisors elected to appropriate money from the county treasury for construction of roads and bridges. Section amended.

§ 2. This act shall take effect and be in force from and after its passage.

Approved February 21, 1859.

An Act to change the time of holding town meetings in the county of Cook. In force February 24, 1859.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That hereafter the annual town meetings in the county of Cook shall be held on the first Tuesday next after the first Monday of November in each year. Town meetings.

§ 2. The supervisor of each town in said county of Cook shall be the moderator of the meeting, and shall, at the same time, be one of the board of election, now provided for by law. The town clerk shall also act as one of the clerks of the election, as also of the town meeting. In case the supervisor and town clerk, or either of them, should be absent, then the electors present shall choose from their number to fill the board of election, and the business of the town meeting, as also the election, for state, county, town and other officers shall proceed in all respects as if they were present. Board of election.

§ 3. The town officers now in office in said county of Cook, shall hold over until the next general election after their term of office, for which they were elected expires, and until their successors are elected and qualified. Town officers.

§ 4. In the towns of North Chicago, West Chicago, South Chicago, and such other towns as may hereafter be created out of said towns, the town meetings now provided for by law, shall be abolished and the board of auditors, now provided for by law, and the assistant supervisors and ward supervisors shall constitute a board, who shall transact all the town business now provided by law to be transacted by the town meeting. Town meeting abolished.

§ 5. The town officers for the towns of North Chicago, South Chicago, and West Chicago shall be voted for by wards or election precincts, and the returns of the elections shall be made to the town clerk of said towns, who, calling to his assistance two justices of the peace of said county, shall canvass the votes and grant certificates of election to the persons receiving the highest number of votes. The judges of election appointed by the common council of the city of Chicago in each year, shall hold said elections. Town officers.

Returns.

§ 6. The board of election shall make returns to the county clerk for all the offices voted for, except the town officers, and shall declare who are elected town officers, as now provided for by law.

Special town meetings.

§ 7. Special town meetings may be held during the year 1859, to transact the business which the changing of the time for the annual town meeting by this act, may make necessary.

§ 8. This act shall take effect and be in force from and after its passage.

Approved February 24, 1859.

In force Feb. 11, 1851. An Act to authorize the Board of Supervisors of Cook County to borrow money.

Supervisors authorized to borrow money.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the Board of supervisors of the county of Cook, and their successors in office, be and they are hereby authorized and empowered to borrow upon the faith and pledge of said county, such necessary sum or sums of money, for any term of time, and at such rate of interest, payable at such place as they may deem expedient, not exceeding fifty thousand dollars, and to issue bonds or scrip therefor, under the seal of the county court of said county, signed by the chairman of said board of supervisors, or by his successor in office, and countersigned by the clerk of said board, or his successor in office: *provided*, that when any money is borrowed under the authority of this act, the time for the repayment of the same shall be so fixed so that not exceeding five thousand dollars of the principal so borrowed shall fall due in any one year. Any sum or sums borrowed under the authority of this act, shall be applied by the board of supervisors, or their successors in office, for the use and benefit of said county, in the payment of the debts of the said county, and for the purchase of a lot or lots for a jail, and the erection thereof, in and for said county, for the repayment of any sum or sums so borrowed, with the interest upon the same. The said board of supervisors, or their successors in office, are hereby authorized to pledge the revenue accruing to the said county.

To issue bonds.

Proviso.

Money how applied.

Special tax.

§ 2. The board of supervisors of said county, or their successors in office, are hereby authorized and required to levy and collect a special tax upon all the taxable property in the county of Cook, sufficient to pay the accruing interest semi-annually, on any sum or sums they may borrow under the authority of this act, and to repay the principal as it may become due, at a rate of not exceeding five thousand dollars in any one year. Said taxes shall be levied and collected at the same time and in the same manner that other taxes of said county are levied and collected, and when collected, shall be applied by said board of supervisors, or their successors in office, to the payment of the interest and the repayment of the principal of the money borrowed under the authority of this act, and to no other use or purpose whatsoever, until the whole of the money so borrowed is paid up in full; and the per-

sons loaning money to said county as aforesaid are to be in no way responsible for the faithful application or use of the money thus borrowed.

Approved February 11, 1851.

An Act in relation to Town Meetings in Cook County.

In force February 21, 1861.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That at any regular town meeting, in any town of Cook county, except the towns of North Chicago, South Chicago and West Chicago, where the legal voters shall vote a tax for any purpose, it shall be the duty of the town clerk of such town to report to the county clerk of said county, within five days thereafter, the amount of such taxes, voted as aforesaid; and said county clerk shall forthwith enter the same upon the collector's book of such town, before the delivery of such book to the collector; and the tax so voted and levied shall be and be held as a special fund for the purpose for which the same was voted.

Report of tax voted to be made in five days.

Clerk to enter on collector's book.

§ 2. This act shall take effect and be in force from and after its passage.

Approved February 21, 1861.

APPENDIX.

[At the late special session of the Legislature, some important acts were passed affecting township organization. A further edition of this compilation being called for, the compiler has thought proper to add in an Appendix those acts referred to, passed at the special session, which acts will be found under the head of "MILITARY AFFAIRS," in the APPENDIX; these relate, among other things, to the assessment and collection of taxes in certain cases, and certain duties of boards of supervisors and township assessors. Several other acts of a general nature have likewise been added in this Appendix, being considered as important in rendering this compilation more complete.]

CENSUS.

(From Chapter Nineteenth of the Revised Statutes.)

SECTION 1. An enumeration of the inhabitants of this state shall be taken on the first day of July, one thousand eight hundred and forty-five, and at the end of every five years thereafter. Census taken every five years.

§ 2. The enumeration shall be taken by commissioners, to be appointed by the county commissioners' courts of the respective counties. Taken by commissioners appointed.

§ 3. The enumeration of the inhabitants of any unorganized county shall be taken by the commissioner of the county to which such unorganized county is attached; the table of enumerations in such counties to be kept distinct from each other. In unorganized counties how taken.

§ 4. Before entering upon their duties, each of such commissioners shall file in the office of the county commissioners' clerk of his county, in substance the following oath: "I, A. B., do solemnly swear, that I will make a just and perfect enumeration and description of all persons resident within the county of C., (and the county of D., thereto attached, when such is the fact,) and perform all other duties required of me by law, according to the best of my knowledge and abilities." Commissioner to take and file oath. Form of oath.

§ 5. Each commissioner shall commence taking such enumeration on the first day of July in each year in which such enumeration is required to be taken, and shall ascertain and set down in a book to be kept for that purpose, in a convenient tabular form, the following facts: the number each, of white males and females of When to commence taking census.

What facts to ascertain and enter in a book. ten years of age and under; over ten and not over twenty; over twenty and not over thirty; over thirty and not over forty; over forty and not over fifty; over fifty and not over sixty; over sixty and not over seventy; over seventy and not over eighty; over eighty and not over ninety; over ninety and not over one hundred; over one hundred: also, the number of white male persons between the ages of eighteen and forty-five years, subject to military duty: also, each, of free male and female persons of color, of all ages; of indentured or registered servants and their children; of French negroes and mulattoes held in bondage: also, the number of manufactories of every kind, and the annual product of each kind; the number and annual product of coal mines; the value of live stock; value of grains produced; value of all other agricultural products; the number of pounds of wool; number of mills and distilleries; the number of universities or colleges; academies and grammar schools, and common schools, with the number of pupils in each.

Number of males and females between certain ages.

Persons of color.

French negroes and mulattoes.

Manufacturers.

Coal miners.

Agricultural and other products.

Enumeration to be made by actual inquiry. § 6. The said enumeration shall be made by an actual inquiry at each dwelling house, or from the head of each family, when the same can be conveniently done, or otherwise from the best information that can be obtained, where there shall be no fixed place of residence, or the head of such family, or other person to be included in such enumeration, shall be absent from the county or state.

Commissioners to make returns of census. § 7. Each of said commissioners shall, on or before the first day of October, of each year in which the enumeration is required to be taken, transmit to the secretary of state, and to the commissioners' court of his county, his return, by him duly certified as correct, full and true, so far as he has been able to ascertain. He shall also transmit to the adjutant-general of the state a certified statement of the number of persons subject to military duty. Such commissioner in his report shall at the foot of each column, list or class, give the total number or amount, and shall give the aggregate number of all the inhabitants of the state.

Shall give total number of inhabitants.

Commissioner failing to make returns. § 8. Each commissioner failing or neglecting to make proper returns, as aforesaid, or making a false return of the enumeration to the clerk of the county commissioners' court of the county, to the secretary of state, and adjutant-general, within the time limited by this chapter, shall forfeit the sum of three hundred dollars, recoverable in the circuit court, of the county where such offence shall have been committed, by action of debt, information or indictment; the one-half thereof to the use of the informer, and the other half to the county. And for the more effectual discovery of said offences, the judges of the several circuit courts, in this state, at their next term to be held after the expiration of the time allowed for making the returns of the enumeration hereby directed, shall give this chapter in charge to the grand juries of their respective counties, and shall cause the returns of the commissioner to be laid before them, for their inspection.

Penalty therefor.

Judges to give provisions of this section in charge to grand juries.

§ 9. Each person, whose usual place of abode shall be in any family, on the said first Monday in July, in the year of our Lord, one thousand eight hundred and forty-five, and on the first Monday in July, every fifth year thereafter, shall be returned with the members of such family; and the name of every person who shall be an inhabitant of any county, or the attached part thereof, without any fixed place of residence, shall be inserted in the county in which he or she, shall be on the said first Monday in July; and every resident person who shall be absent from the county or state, at the time of taking any such enumeration, shall be set down as belonging to the place where he or she, usually resides in this state.

Who shall be considered, and returned as members of families.

Who considered residents.

§ 10. Each free person, over the age of sixteen years, whether heads of families or not, belonging to any family within any county, made or established in this state, shall be and hereby is obliged to render to the commissioner appointed in said county, if required, a true account, to the best of his or her knowledge, of every person belonging to such family, respectively, according to the several descriptions aforesaid, on pain of forfeiting twenty dollars, to be sued for and recovered, by action of debt, by such commissioner, for the use of the proper county: *provided*, that in all cases where any such fine shall be assessed against any minor or minors, the same shall be paid by his, her or their parent or guardian; and in case of his or her refusal to pay the same, an attachment may be issued to enforce the payment thereof.

Heads of families and others to render account of persons in family.

Penalty for refusing.

Proviso as to minors

§ 11. Each of said commissioners shall receive at the rate of two dollars for every hundred persons returned, for the first two thousand; at the rate of one dollar and seventy-five cents for each hundred persons returned, over two and not exceeding three thousand; at the rate of one dollar and fifty cents for the fourth thousand; at the rate of one dollar and twenty-five cents for the fifth thousand; and at the rate of one dollar for each hundred over and above five thousand; to be paid out of the state treasury, out of any moneys not otherwise appropriated.

Compensation of commissioners.

§ 12. The secretary of state shall receive and file such returns in his office, and return the same to the speaker of the house of representatives, on or before the second day of the next session after such enumeration is made; and the adjutant-general shall file the returns to be made to him of the number of persons subject to militia duty, as aforesaid, in his office; and shall immediately thereafter make out a statement of the whole number of such persons, and report the same to the secretary at war of the United States.

Compensation to be paid out of state treasury.

Secretary of state to file returns and return to speaker of house of representatives.

Report to the secretary of war.

Approved March 3, 1845.

DOGS.

An Act providing for the payment of damages done by Dogs.

In force February 11, 1853.

SECTION 1. *Be it enacted by People of the State of Illinois, represented in the General Assembly,* That the owner of any dog or dogs shall be liable in an action on the case for all damages that

Owner liable.

may accrue to any person or persons in this state, by reason of such dog or dogs killing, wounding, or chasing any sheep or other domestic animal, belonging to such other person or persons; and when the amount of such damages does not exceed one hundred dollars, the same may be recovered by an action before a justice of the peace.

Authorize to kill. § 2. If any person shall discover any dog or dogs in the act of killing, wounding, or chasing sheep in any portion of this state, or shall discover any dog or dogs under such circumstances as to satisfactorily show that such dog or dogs has been recently engaged in killing or chasing sheep, for the purpose of killing them, such person is authorized to immediately pursue and kill such dog or dogs.

This act to take effect from and after its passage.

Approved February 11, 1853.

ESTRAYS.

(From Chapter Thirty-ninth of the Revised Statutes.)

**Persons taking up
estrays, how to
proceed.**

SECTION 1. Every person who shall take up any estray horse, mare, colt, mule or ass, after having given not less than ten nor more than fifteen days' notice, by posting up notices in three of the most public places in the justice's district in which he resides, shall take the same before some justice of the peace of the county where such estray shall be taken up, and make oath before such justice, that the same was taken up at his or her plantation or place of residence in said county, and that the marks or brands have not been altered since the taking up.

**Justice to appoint
appraisers.**

§ 2. The said justice shall then issue his warrant to three disinterested housekeepers in the neighborhood, unless they can otherwise be had, causing them to come before him to appraise said estray, after they or any two of them being sworn to appraise such estray, without partiality, favor or affection; which appraisment, together with the marks, brands, stature, color and age of such horse, mare or colt, mule or ass, shall be entered in a book to be kept by such justice, and certified under his hand, and transmitted to the clerk of the county commissioners' court of such county, within fifteen days after the same is taken up.

**Appraisers to be
sworn.**

**Description to be
entered and certified.**

**Proceedings in
case of estray cat-
tle, sheep, hogs or
goats.**

§ 3. Any person who shall take up any head of neat cattle, sheep, hog or goat, after having given the notice required in section one of this chapter, shall go with some householder before a justice of the peace of the county, and make oath before him as is required in taking up an estray horse, mare or colt, mule or ass, and then such justice shall take from such housekeeper, upon oath, a particular description of the marks, brands, color and age of every such neat cattle, sheep, hog or goat, and said justice shall cause the said estrays to be appraised, in like manner as is required to be done in case of a horse, mare or colt, mule or ass; which description and valuation shall be entered by such justice in a book to be

kept by him as aforesaid, and by such justice transmitted to the clerk of the county commissioners' court of the county, to be by him kept as before directed: *provided*, that in all cases where the value of such neat cattle, sheep, goat or hog, does not exceed five dollars, said justice shall not be required to make a return to the clerk as aforesaid; but shall enter in his estray book the description and appraisement value of such sheep, hog or goat, and advertise the same in three of the most public places in his neighborhood.

Proviso as to value.

§ 4. Every such clerk shall cause a copy of such description and valuation of every neat cattle, sheep, hog and goat returned to him, to be publicly affixed at the court house door of his county, within five days after the same shall be transmitted to him as aforesaid, for which he shall receive the same fee as for entering the same in a book.

Clerk to post copy of description and valuation.

§ 5. If two or more estrays of the same species, are taken up by the same person at the same time, they shall be included in one entry and one advertisement, and in such case, such justice and clerk shall receive no more pay than for one of such species.

Two or more estrays to be included in same entry.

§ 6. No person shall be allowed hereafter to take up and post any head of neat cattle, sheep, hog or goat, between the month of April and the first day of November, unless the same may be found in the lawful fence or inclosure of the taker up, having broken in the same; and for a reward of taking up, there shall be paid by the owner, one dollar for every horse, mare or colt, mule or ass; and for every head of neat cattle, fifty cents; and for every hog, sheep or goat, twenty-five cents, together with all reasonable charges.

Time of taking up estrays.

Reward and charges.

§ 7. Proof of the giving of notice as required in the first and third sections of this chapter, may be made by the oath of the person advertising, or a credible witness, previous to the appraisement.

Proof of giving notice how made.

§ 8. If the owner of any such animals shall prove and take them away, before the appraisement thereof, he shall pay to the person who has care of the same, all reasonable charges for taking up and keeping the same.

Charges when taken away before appraisement.

§ 9. It shall not be lawful for persons taking up estrays, to use the same previous to advertising them, unless it be to milk cows, and the like, for the benefit and preservation of such animals.

Not to use before advertising.

§ 10. It shall be the duty of the clerk of the county commissioners' court when the description and valuation of any estray horse, mare or colt, mule or ass shall be transmitted to him by the justice as aforesaid, and in ten days thereafter make out a copy thereof, and transmit the same to the public printer of the state, and indorse thereon, "Estray papers," together with the sum of one dollar, to pay the said printer; which sum the taker up is required to deposit with the clerk prior to the expiration of said ten days. It shall be the duty of the public printer to publish said advertisement, and transmit one copy of each number of his paper to each of the clerks of the county commissioners' court of the

Advertisement of estray horse, mule or ass to be sent to public printer.

Fee, one dollar.

Duty of public printer.

several counties of this state, free of charge, which shall be regularly filed by said clerks in their respective offices for the examination of those who may desire it.

After one year,
property vests in
taker up.

§ 11. And if no owner appear and prove his property within one year after such publication, the property shall be vested in the taker up; nevertheless, the former owner may, at any time thereafter, by proving his property, recover the valuation money, upon payment of costs and all reasonable charges.

Penalty for dis-
posing of estrays.

§ 12. And if any person shall trade, sell, or take away any such estray or estrays out of the state, for any purpose whatever, before the expiration of said one year, he or she so offending, shall be liable to indictment in the circuit court of the proper county, and on conviction thereof, shall be fined in a sum double the value of the property, one-half to the owner thereof, and the other half to the county treasury; and when the owner of any estray head of neat cattle, sheep, hog or goat, does not prove his property within twelve months after the same has been published at the door of the

When estray does
not exceed in
value five dollars.

court house as aforesaid, and when the valuation does not exceed five dollars, the property shall be vested in the taker up; but when the valuation shall exceed five dollars, and no owner appear within the time aforesaid, the property shall also be vested in the taker up; nevertheless, the former owner may, at any time, by proving his property, recover the valuation thereof, upon payment of all reasonable costs and charges; and if the taker up and the owner can not agree upon the charges, they shall call upon three disinterested householders, whose decision shall be binding on both parties; and it shall not be lawful for any person to take up any estray, (except such as shall be hereinafter excepted,) unless he shall be a freeholder or a housekeeper.

Former owner
may recover
value.

Charges how set-
tled upon.

Estray horse,
mule or ass found
without the set-
tlements.

§ 13. Any person finding a stray horse, mare, colt, mule or ass, running at large without any of the settlements of this state, may take up the same, and shall immediately take such estray or estrays before the nearest justice of the peace, and make oath that he has not altered the marks or brands of such estray, since taking up; and if such taker up shall be a freeholder or housekeeper within that county, it may and shall be lawful for him, to post such estray or estrays as hereinbefore directed in this chapter, as if the same had been taken up on his plantation or place of residence; and when the taker up shall not be qualified as aforesaid, he shall take the oath before required, and deliver such estray or estrays to the said justice, who shall cause the same to be dealt with as directed by this chapter.

Proceedings to
appraise.

When estray shall
be sold to highest
bidder.

§ 14. If no owner appear to prove his property within one year, such estray or estrays shall be sold to the highest bidder, giving public notice of such sale twenty days previous thereto, the purchaser giving a bond and approved security, payable to the county commissioners' court of the county where such estray shall be taken up; and after paying the taker up all reasonable charges, the balance shall be put into the county treasury by the said jus-

Money to be put
into the county
treasury.

tice, who shall take a receipt for the same from the county treasurer; nevertheless, the former owner, at any time within two years after taking up, by proving his property before the clerk of the county commissioners' court of said county, or before the justice of the peace before whom the property was taken up, and obtaining a certificate thereof, from the clerk of said court or justice of the peace, to the treasurer, shall receive the balance aforesaid.

Owner may have the purchase money by proving property within two years.

§ 15. And when any justice of the peace shall fail to pay any money for any estray or estrays to be sold agreeably to this chapter, into the county treasury, within three months after selling such estray or estrays, such justice shall forfeit and pay the sum of twenty dollars, with costs, to be recovered by action of debt, before any justice of the peace of the county, or other court having jurisdiction thereof, the one-half for the use of the county, and the other half for the use of any person suing for the same; and moreover, be liable to pay the price of such estray or estrays, with interest thereon.

Penalty when justice refuses to pay money into the county treasury

§ 16. If any estray or estrays, taken up as aforesaid, shall die or get away before the owner shall claim his or her right, the taker up shall not be liable for the same; and if any person shall take up any estray or estrays, at any other place within the inhabited parts of this state than his or her plantation or place of residence, or without being qualified as required by this chapter, he shall forfeit and pay the sum of ten dollars, with costs, recoverable before any justice of the peace of the county where the offence shall have been committed, and not having property sufficient to pay such fine, he shall be liable to be confined one month in the jail of the county where he may be found, being found guilty of such offence according to law; and any person taking up any estray or estrays out of the limits of the settlements of this state, and failing to comply with the requisitions of this chapter, shall be liable to the same penalties; and if any person, taking up any estray or estrays of any species, fail to comply with the requisitions of this chapter, he shall, for every such offence, forfeit and pay to the informer, the sum of ten dollars with costs, recoverable before any justice of the county where such offence shall be committed; one half to the use of the county, and the other half to the use of the person suing for the same.

When estray dies or gets away taker up not liable.

Penalty when person takes up estray without being qualified.

Penalty where persons fail to comply with provisions of this chapter.

§ 17. If any person or persons shall hereafter stop or take up any keel or flat boat, ferry flat, batteau, pirogue, canoe, or other vessel or water craft, or raft of timber, or plank found adrift on any water course within the limits or upon the borders of this state, and the same shall be of the value of five dollars or upwards, it shall be the duty of such person or persons, within five days thereafter, (provided the same shall not before that time be proven and restored to the owner,) to go before some justice of the peace of the proper county, and make affidavit in writing, setting forth the exact description of such vessel or craft, when and where the same was found, whether any, and if so, what cargo was found on board,

Estray boats or water crafts.

Proceedings in case of taking up.

- and that the same has not been altered or defaced, either in whole or in part, since the taking up, either by him, her or them, or by any other person or persons, to his, her or their knowledge; and the said justice shall thereupon issue his warrant, directed to some constable of his county, commanding him forthwith, to summon three respectable householders of the neighborhood, if they can not otherwise be had, whose duty it shall be, after being sworn by said justice, to proceed without delay to examine and appraise such boat or vessel, and cargo, if any, and make report thereof, under their hands and seals, to the justice issuing such warrant, who shall enter such appraisement, together with the affidavit of the taker up, at large in his estray book; and it shall be the further duty of said justice, within ten days after the said proceedings shall have been entered in his estray book as aforesaid, to transmit a certified copy thereof to the clerk of the county commissioners' court of his county, to be by him recorded in his estray book, and filed in his office.
- Justice to appoint appraisers. § 18. In all cases where the appraisement of such boat or water craft, including her cargo, shall not exceed the sum of twenty dollars, the taker up shall advertise the same on the door of the court house, and in three of the most public places in the county, within ten days after the justice's said certificate shall have been entered on the records of the county commissioners' court; and if no person shall appear to prove and claim such boat or water craft within six months from the time of taking up as aforesaid, the property in the same shall vest in the taker up; but if the value thereof shall exceed the sum of twenty dollars, it shall be the duty of the clerk of the county commissioners' court, within twenty days from the time of the reception of the justice's said certificate at his office, to cause an advertisement to be set up on the door of the court house, and also a notice thereof to be sent to the public printer as aforesaid, who shall publish the same as aforesaid; and if the said vessel be not claimed and proven within six months from said advertisement, the same shall be vested in the taker up; nevertheless, the former owner may, at any time thereafter, recover the valuation money by proving his property and allowing to the taker up a reasonable compensation for his trouble, and costs and charges.
- Duty of appraisers. After six months, property vests in taker up.
- Duty of justice.
- When boat shall be advertised.
- When advertisement shall be published by public printer.
- Former owner may recover value of property.
- Fees and compensation under this chapter.
- § 19. In all cases where services shall be performed by any officers or other person or persons under this chapter, the following fees or compensation shall be allowed, to wit: to the justice of the peace for administering oath to the taker up or finder, making an entry thereof, with the report of appraisers, and making and transmitting a certificate thereof to the clerk of the county commissioners' court, fifty cents; to the clerk or justice for taking proof of the ownership of, and granting a certificate of the same, twenty-five cents; for registering each certificate transmitted to him by any justice as aforesaid, twelve and a half cents; for advertisements, including the newspaper publications, fifty cents in addition to the cost of such publication; to the constable for each warrant so served on appraisers, twenty-five cents; and to each appraiser

the sum of twenty-five cents; which said fees shall be paid by the taker up to the person entitled thereto, whenever said services shall be rendered. All which costs and charges shall be reimbursed to the taker up or finder, in all cases where restitution of the property shall be made to the owner, in addition to the reward to which such person may be entitled for taking up as aforesaid.

Costs and charges
how reimbursed.

§ 20. If any person shall act contrary to the duties enjoined by this chapter, for which no penalty is hereinbefore pointed out, the person so offending shall, on conviction thereof, forfeit and pay for every such offence, not less than five nor more than one hundred dollars, to be sued for in the name of the proper county, before any justice of the peace or other court having cognizance thereof.

Penalty when
persons act con-
trary to this
chapter.

Approved March 3, 1845.

HORSES.

(From Chapter Forty-nine of the Revised Statutes.)

SECTION 1. It shall be lawful for any person to take up any stoned horse that may be found running at large out of the inclosure of the owner or keeper, more than one year old, and shall give notice thereof to the owner or keeper; and if such owner or keeper shall not take away or secure the same, allowing him one day for every fifteen miles he may reside from such taker up, the taker up shall take or show the same to a justice of the peace within the county, and if it shall appear to such justice, that said horse is more than one year old, he shall issue his warrant to some person skilled in the business, to geld such stoned horse; or the same may be shown by the taker up, to any horse farrier, or other person of the county, well skilled in the age of horses; and if, upon view and examination, the horse shall be considered of the age of one year old, the person so examining, if he be skilled in the business, may geld and alter the same; if not, he shall give a certificate relative to the age thereof, and the taker up may then take said horse to some person skilled as aforesaid, and have the same gelded, and in performing the operation, reasonable care shall be taken to preserve the life of the animal; but should the owner not be known to the taker up, he shall advertise the same in three of the most public places in the county for ten days, giving a true description thereof; and if no owner or person on his behalf, shall, by that time appear and take charge of said horse, such taker up may proceed as above directed, and have the same gelded; and the owner shall pay to the taker up the sum of two dollars, together with reasonable charges for advertising and keeping the same, if the same be advertised, and the person altering shall be paid by the person applying to have the same done.

Stoned horses
running at large,
may be taken up.

Notice to owner.

Proceedings when
horse is not taken
away

When horse shall
be advertised.

Charges how
paid.

§ 2. It shall not be lawful for any person to alter any horse that is known to be kept for covering mares, which may accidentally break out of, or from the possession of the owner or keeper, and be found running at large; in that case the same shall be taken

Horses acciden-
tally breaking out
shall be returned
to the owner.

- Expenses and trouble, how paid.
- Penalty for wilfully suffering horse to run at large.
- Where owner does not appear and take away horse.
- Horses having infectious diseases not permitted to run at large.
- Penalty.
- Penalty for exposing conduct to view.
- Penalties how recovered.
- to the owner or keeper, without unnecessary delay, and the owner or keeper shall thereupon pay such person, so taking up and delivering the said horse, the sum of two dollars; and should the trouble and expense of taking up, keeping and delivering, be extraordinary and great, a further and liberal sum shall be paid by the owner or keeper of such horse to the person so taking up and delivering, but if the owner or keeper of any stoned horse, whether he be kept for covering mares or not, shall negligently or wilfully suffer the same to run at large, out of his inclosure, any person may take such horse up, and forthwith have the same gelded by some person skilled in the business, which shall be done carefully, and the owner or keeper shall pay to such taker up, the sum of five dollars; the taker up paying the fee or charge for gelding; and the owner or keeper shall, moreover, be liable for and pay all damages which any person may sustain, in consequence of such horse running at large; and if any horse shall die, or be injured, in consequence of such gelding, the same being carefully done by a person skilled in the business, as above contemplated, the owner or keeper thereof shall have no recourse whatever for damages upon such taker up, or person who shall have gelded the same.
- § 3. If the owner or keeper of any horse, or other person in his behalf, shall not appear and take charge of the same, after being altered as aforesaid, the taker up shall take care of, feed and nourish the same, until said horse shall have recovered, and shall then turn the same out, and the owner shall pay to such person a reasonable sum in money therefor.
- § 4. If any person shall suffer to run at large, or keep in any place where other creatures can have access to, and become infected, any horse, mare, gelding, mule or ass, that is known to the owner or the person having the same in his care and possession, to be afflicted with glanders, distempers or any other infectious disease, he shall be fined in the sum of twenty dollars, and shall be liable to pay all the damage that may result from such running at large, of such afflicted horse, mare, gelding, mule or ass, to be recovered before any justice of the peace in the county, if the sum of damages be under one hundred dollars, otherwise in the circuit court.
- § 5. Any person letting any stallion to any mare, within any town or village in this state, the same not being incorporated, or immediately in the vicinity thereof, that may expose such conduct to public view, shall be liable to pay a fine not exceeding five dollars, at the discretion of any justice of the peace, to whom complaint shall be made, with costs of prosecution.
- § 6. All sums or penalties incurred under the provisions of this chapter, provided the same do not exceed one hundred dollars, shall be recovered before any justice of the peace; if above that, in the circuit court; and appeals shall be allowed as in other cases, to said court.

Approved March 3, 1845.

IDIOTS AND LUNATICS.

(From Chapter Fifty of the Revised Statutes.)

(1.) SECTION I. Whenever any idiot, lunatic or distracted person has any estate, real or personal, the judge of the circuit court of the county in which such idiot, lunatic or distracted person lives, shall, on the application of any creditor or relation, or if there be neither creditor nor relation, then any person living in such county, order a jury to be summoned, to ascertain whether such person be lunatic, insane or distracted; and if the said jury return, in their verdict, that such person is lunatic, insane or distracted, it shall be the duty of the judge aforesaid to appoint some fit person to be the conservator of such idiot, lunatic or distracted person.¹

Where idiot or lunatic has property.

Proceedings by creditor or relative.

Verdict of jury.

Conservator to be appointed.

(2.) SEC. II. The conservator of such estate, so appointed, shall enter into bond with sufficient security, to be approved by the said judge, to the treasurer of the county in which such idiot, lunatic or distracted person resides, in double the amount of such estate, for the faithful discharge of his duty.

Conservator to give bond.

(3.) SEC. III. Such conservator shall have the entire care of the estate of such idiot, lunatic or distracted person, both real and personal; and such conservator shall forthwith make a true and perfect inventory of said estate, and return the same into the office of the clerk of the circuit court of said county, where it shall be kept on file; and shall render his account to the judge of said court, of the management of such trust, when thereto required; and shall be allowed by such judge reasonable compensation for his services. And said court shall have power to remove such conservator for neglect of duty or mismanagement of his trust, and appoint another in his place.

Conservator to have entire care of estate.

Make inventory and return same.

Shall render account.

Compensation.

May be removed.

(4.) SEC. IV. It shall be the duty of such conservator, to apply the annual income and the profits thereof, to the support of such idiot, lunatic or distracted person, his or her family. He shall have power to collect all debts due to such person, and to institute suits for that purpose, and to adjust and settle all accounts and debts due from him or her; he may sell or dispose of the personal estate to pay his or her debts, or to support him or her, or his or her family, and to educate the children of the same.

Annual income how applied.

Debts to be collected.

May sell property.

(5.) SEC. V. The said conservator may sue and be sued, in every instance, as the representative of the person so insane, lunatic or distracted, and execution may issue in the name of and against the said conservator, as representative as aforesaid; and all the property of such person may be sold to pay his or her just debts, that might or could be sold in other cases.

Conservator may sue and be sued.

(6.) SEC. VI. The overseers of the poor in every county, shall take charge of the body of any person so insane, lunatic or

Overseers of the poor to take charge of lunatic.

(1) In a proceeding, under the statute, to procure the appointment of a conservator to a lunatic, the lunatic must have reasonable notice, or the inquisition will be set aside. *Eddy v. The People*, 15 Ill., 386.

distracted, and shall have power to confine him or her, and shall comfortably support such person, and make out an account thereof, and return the same to the county commissioners' court, whose duty it shall be to make an order, requiring the treasurer of said county to pay the same out of any money in the treasury of said county not otherwise appropriated.

When lunatic restored to reason, property to be restored.

(7.) SEC. VII. If such person, as aforesaid, shall be restored to his or her reason, then what remains of his or her property and estate, shall be returned to him or her; or in case of his or her death, to his or her heirs, executors or administrators, after a reasonable allowance to said conservator for his services, to be ascertained by the judge of said court.

Contracts with idiots and lunatics to be void.

(8.) SEC. VIII. All contracts, agreements or credits with idiots, lunatics or distracted persons, either by note, bond, bill or otherwise, shall be void, as against said idiot, lunatic or distracted person; but persons making such contracts or agreements, with such idiot, lunatic or distracted person, shall be bound thereby.

Penalty for trading with idiot or lunatic.

(9.) SEC. IX. If any person or persons shall, by trading with, bartering, gaming or any other device possess himself or herself, or themselves, of any property or valuable thing, belonging to any idiot, lunatic or notoriously distracted person, he, she or they shall be deemed guilty of swindling, and upon conviction thereof, shall be liable to all the penalties as in other cases of swindling, and any person may appear and prosecute with effect.

Approved March 3, 1845.

An Act to provide for the Sale of the Estates of Insane Persons.

Proceedings to sell real estate of idiot or lunatic.

(10.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That whenever it shall become necessary to sell the real estate of idiots, lunatics or distracted persons, for the purpose of paying debts, supporting a family or educating children, or when it shall be deemed proper to make such sale for the purpose of investing the proceeds in real estate, the conservator shall petition the circuit court of the county in which he was appointed, or in which the parties to the proceeding, or a part of them, reside, asking that an order or orders be made, authorizing such sale.

What the petition to the court shall set forth.

(11.) SEC. II. The petition aforesaid shall set forth and state the reasons why, and the purposes for which, a sale of real estate is deemed necessary or proper, and shall be accompanied by an inventory or descriptive list of all the real estate owned or possessed by such idiot, lunatic or distracted person, together with a statement of the accounts of the conservator, showing the disposition of the money, property or effects which may have come to his hands, setting forth also the names of all persons who would be interested in the estate, in case of the death and intestacy of the owner thereof, all of whom shall be made parties to the proceeding.

On filing petition, summons to issue.

(12.) SEC. III. Upon the filing of the petition aforesaid, a summons shall be issued against the persons made parties as afore-

said, and which shall be served as in cases in chancery. And in case any of said parties can not be found, or reside out of the state, they shall be notified of the proceeding by publication, as in proceedings in chancery against non-residents. Non-resident parties notified.

(13.) SEC. IV. The court shall appoint guardians *ad litem* for infant parties, when no guardians shall appear, and also make any and all orders necessary to bring parties before it, and to a proper and speedy disposition of the petition in a manner consistent with the facts and the rights of all parties interested, directly or indirectly, in the estate to be affected. Guardians *ad litem* for infant parties.

(14.) SEC. V. When all parties as aforesaid shall have been notified of the proceeding, the court, upon the hearing of the petition, the objections thereto, if any are interposed, and all facts with respect to the matter thereof, shall, in the exercise of a sound discretion, make such order or orders as may appear necessary and proper to execute the provisions of this act, and to supply conservators and families of idiots, lunatics and distracted persons with means to be used for the purposes herein expressed. Hearing of the case by the court.

(15.) SEC. VI. Orders of sale made by court shall describe the property to be sold, and specify the terms of sale, and direct the application or use of the money; and power is hereby vested in said courts to make any and all orders necessary to the security and proper application of the moneys in the hands of conservators. Orders of sale to describe the property.

(16.) SEC. VII. Conservators appointed in foreign states may avail themselves of the provisions of this act, by filing a copy of their appointment with the clerk of the circuit court, and giving security for costs, and by furnishing satisfactory evidence that they have given adequate and sufficient security for the faithful and proper application of the funds arising from the sale. Conservators of foreign states.

(17.) SEC. VIII. This act shall take effect and be in force from its passage.

Approved Feb. 12, 1853.

MARKS AND BRANDS.

(From Chapter Forty-eight of the Revised Statutes.)

SECTION 1. Every person in this state, who hath cattle, horses, hogs, sheep or goats, may have an ear mark and brand, and but one of each, which shall be different from the ear mark and brand of his neighbors; which ear mark and brand may be recorded by the clerk of the county court where such cattle, horses, hogs, sheep or goats shall be. Persons may have and record marks and brands for cattle and other animals.

SEC. 2. It shall be the duty of the county clerks, in the respective counties of this state, to keep a well-bound book, in which they shall record the marks and brands of each individual who may apply to them for that purpose; for which they shall be entitled to demand and receive the sum of twelve and a half cents; and the book in which the same are recorded, shall be open to the County clerks to record marks and brands. Fees for recording.

examination of every citizen of the county at all reasonable office hours, free of charge.

Marks and brands decided by reference to the record.

SEC. 3. If any dispute shall arise about any ear mark or brand, it shall be decided by reference to the book of marks and brands kept by the county clerk, but such book shall be *prima facie* evidence only.

Persons purchasing stock may change marks and brands in presence of witnesses.

SEC. 4. Any person purchasing or acquiring horses, cattle, hogs, sheep or goats, when he brands or marks the same in his brand or mark, after the acquisition of the same, may do it in the presence of one or more of his neighbors, who are authorized to certify to the fact of the marking or branding being done, when done, and in what brand or mark the same were, previously, and in what brand or mark they were re-branded or re-marked. Such certificate shall not be deemed evidence of property in the animal branded, but only *prima facie* evidence of the facts therein certified to.

Approved March 3, 1845.

MILITARY AFFAIRS.

In force May 2, 1861. An Act creating a War Fund and to provide for auditing all accounts and disbursements arising under the call for Volunteers.

Appointment of commissioners.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That a board of commissioners to consist of three prudent and discreet men, be created, who shall audit all accounts for supplies and munitions of war, camp equipage and provisions, equipments, clothing and supplies, furnished for any portion of the Illinois troops on special service, under the orders of the governor, and all accounts in any way or manner originating under the call of the president for volunteers, or the proclamation of the governor for such volunteers, or which should properly be charged to the war fund; and no accounts shall be allowed or paid by the governor which are not approved by said board.

§ 2. All funds or moneys which shall be raised or appropriated under any act of this session of the general assembly, except for the payment of the expenses of the same, shall be kept separate and apart, and be denominated the war fund.

Oaths of commissioners.

§ 3. The said commissioners shall, before proceeding to exercise the powers herein conferred, be sworn or affirmed to faithfully perform the duties enjoined upon them by this act, and shall meet at such place or places as they shall appoint, of which due notice shall be given, and proceed to examine all such bills and accounts, and examine all vouchers, and hear all such evidence as may be presented to them under the provisions of this act; and shall approve and allow all such bills and claims as shall be shown, in their judgment, to be just and reasonable, taking into consideration the circumstances under which they were created.

Report.

§ 4. They shall make out a detailed report, accompanied by

the necessary vouchers, in writing, to the governor, for all claims allowed by them, with the names of those in whose favor they are allowed, and the amounts thereof, and for what allowed, and if the same be approved by the governor, the auditor shall draw his warrant upon the treasury for the sums therein specified in favor of the persons therein named or their assignees, to be paid out of the said war fund.

§ 5. All claims and accounts accruing against the state for war expenses or disbursements, which are specified in this act, and which have already accrued, shall be presented within three months from the passage of this act, and all other claims shall be presented within three months from the accruing of the same, or the same shall be considered as donated to the state, and shall not thereafter be allowed under any pretense whatever. Limitation of claims.

§ 6. Any vacancy or vacancies occurring in said board, shall be filled by appointment by the governor, until otherwise directed by the legislature. Vacancies.

§ 7. The governor, by and with the advice and consent of the senate, shall appoint said board, and their compensation shall be five dollars per day, for each day actually employed, to be paid out of the war fund: *provided*, that said board shall only remain in session so long as is absolutely necessary for the prompt and efficient discharge of its duties. Compensation of board.

§ 8. The governor, auditor and treasurer be and they are hereby authorized to issue bonds of the state of Illinois, bearing interest at six per cent. per annum, for such sums as they, or a majority of them, may deem necessary for the purpose of organizing the militia, repelling invasion and defending the state in war, and to sell the same for the best price, and on the best terms, which can, in their judgment, be obtained for the same, in money—five hundred thousand dollars of said sum to be issued in denominations of one hundred dollars; five hundred thousand dollars of said sum to be issued in the denomination of five hundred dollars; and one million of dollars of said sum of the denomination of one thousand dollars. The principal reimbursable at the pleasure of the state, after the year of our Lord eighteen hundred and seventy-nine, (1879,) in the city of New York, and the interest payable semi-annually on the first Mondays of January and July in each year, at such place in the city of New York as may be designated by public notice in three newspapers published in said city, one month before such interest shall become due. Issue of bonds.

§ 9. The aggregate amount of bonds which shall be issued under the provisions of this act, shall not exceed two millions of dollars. The bonds which were prepared for refunded stock under the act of February 22d, A. D. 1859, may be issued under this act, as far as applicable; but, in such case, there shall be printed across the face of the same the following words: "Issued under the act creating a war fund and to provide for auditing all accounts and disbursements arising under the call for volunteers." The in- Amount of bonds.

terest on said bonds shall not commence running previous to July 1st, 1861. And to provide for the payment of such interest it shall be the duty of the auditor of public accounts to assess, annually, upon the taxable property of this state, in addition to all other taxes, a sum sufficient, with the interest fund not otherwise appropriated, if any there be in the state treasury, to pay the interest upon the debt hereby created; which said sum shall be assessed and collected in the same manner as other state taxes are or may be assessed and collected. The fund thus collected shall be kept with the interest fund, and shall be applied only to the payment of interest on the state debt. For the payment of the principal and interest of said bonds, the faith and credit of the state is hereby irrevocably pledged.

Authority of
guardians.

§ 10. It shall be lawful for guardians and persons holding money in a fiduciary capacity, to invest the same in the purchase of said bonds at the current rates, not exceeding par, and hold the same for the benefit and use of the persons whose funds they hold.

Additional loan.

§ 11. In addition to the bonds authorized to be sold by the preceding section, the governor is also further authorized to sell the bonds of the state of like character, to the amount of fifty thousand dollars, to supply a casual deficiency in the revenue fund, and provide for the expenses of this general assembly.

§ 12. In no case shall more bonds be sold or used than may be necessary to meet, from time to time, the actual expenses incurred in carrying out the provisions of this act.

§ 13. This act shall take effect and be in force from and after its passage.

Approved May 2, 1861.

In force May 2, 1861.
Appropriations
by towns and
cities.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the corporate authorities of any town or city and the county court or board of supervisors of any county in this state, is hereby authorized to appropriate such sum as they may deem expedient, for the purpose of aiding in the formation and equipment of volunteer companies mustered into the service of the United States or of this state, for the purpose of enforcing the laws, suppressing insurrection or repelling invasion, and to aid in the support of the families of members of such companies, while engaged in such military service.

§ 2. For the purpose of raising the means to pay any appropriation made pursuant to the foregoing section, the corporate authorities of any town or city, the county court or board of supervisors of any county making such appropriation, may cause a tax to be levied and collected, not exceeding five mills on the dollar, per annum, upon the taxable property of such town, city or county.

Taxes.

§ 3. Any appropriations heretofore made by the authorities of

any city, town or county, for the purpose mentioned in the first section of this act, are hereby legalized, and the payment thereof may be provided for by the levy and collection of a tax, not exceeding five mills on the dollar, per annum, as other city, town or county taxes.

§ 4. It shall be the duty of the proper authorities of any city, Disbursing agent. town or county, which shall make or has heretofore made appropriations, as aforesaid, to appoint some person or persons to disburse said appropriation, under such rules and regulations as such city, town or county authorities may direct; and the agent or agents making such disbursement, shall keep full and true accounts of the persons to whom and objects for which such disbursements are applied, and render an account of the same, with vouchers and receipts to said city, town or county authorities, as they may be, from time to time, required; and the accounts thus rendered, shall, with accompanying receipts and vouchers, be filed and preserved, and be subject to examination as other public records or archives of such city, town or county: *provided*, the state shall never be chargeable for any such sums raised by any such corporations.

§ 5. This act shall take effect from and after its passage.

Approved May 2, 1861.

An Act to amend chapter Seventy, Revised Statutes, entitled Militia.* In force May 2, 1861.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

ARTICLE I.

SECTION 1. The militia of the state of Illinois shall be composed of all free white male, able bodied citizens thereof, who are between the ages of eighteen and forty-five years; and for the purposes of this act permanent residents shall be deemed citizens.

§ 2. As soon as may be, after the passage of this act, it shall be the duty of the assessors of townships, in counties having township organization, to make a complete list of all persons in their respective townships, subject to military duty under this act, one copy of which, duly certified, shall be filed and recorded in the office of the county clerk of said county; and said return shall be made before the first day of August next. List to be made by assessors.

§ 3. It shall be the duty of the assessors in counties not having township organization, to make a like complete list of all persons subject to military duty as aforesaid, in their respective counties, and cause the same to be recorded in the office of the county clerks of their respective counties as soon as may be, and by the first day of August next.

§ 4. It shall be the duty of the county clerks, on receipt of the aforesaid lists, forthwith to forward a certified copy of said list to the adjutant-general of this state, who shall cause the same to be filed in his office. Filing of lists with adjutant-general.

§ 5. Said lists shall be annually corrected by said assessors, at

*This Act is repealed.

the time of making their annual assessments; copies of which shall be duly certified, forwarded and filed as aforesaid.

ARTICLE II.

§ 1. The said militia shall be divided into two classes; first, the *voluntary*, and secondly, the *reserve*.

Voluntary militia.

§ 2. The first class shall consist of those who voluntarily organize themselves into companies, of not less than fifty nor more than one hundred members each, and who shall have a uniform and shall elect officers and assemble for drill and purposes of military discipline, not less than four days in each year, and who shall be furnished with arms and equipments by the state, and be first subject to call or draft into service at the requisition of the governor.

Reserve.

§ 3. The second class shall consist of those who do not organize themselves into companies as aforesaid, and shall also be subject to draft, or called into service.

ARTICLE III.

Company officers.

§ 1. The company shall elect their own officers by ballot, who shall appoint the non-commissioned officers of their respective companies, and the companies shall, by vote, select their place for drill, and shall hold special drill on call of the captain or vote of the company.

Regimental officers.

§ 2. Whenever, in the opinion of the governor of the state, the public good requires, he shall, by order, direct the said volunteer companies, so organized, to form into regiments of not less than five nor more than ten companies each, and to that end shall designate in such order the several companies which shall form the respective regiments, and the time and place when and where the said companies shall convene for the purpose of electing regimental officers, at which time and place the said companies shall proceed to elect by ballot, one colonel, one lieutenant-colonel and one major, for each of their respective regiments, and said regimental officers so elected shall have the appointment of their staff.

Term of office.

§ 3. Captains and lieutenants of companies, and the elective officers of regiments, shall be commissioned by the governor, for the period of six years from the date of their election, respectively.

Length of service.

§ 4. Volunteer militia shall serve for the term of six years, unless discharged by age or other legal disability, and shall ever afterwards be free from involuntary military duty, except in case of war or invasion, and shall, during said service, be free and exempt from personal highway tax and from serving as jurors.

ARTICLE IV.

Assessor's pay.

§ 1. The said assessors shall receive for their services in making the list mentioned in sections two and three in article first

of this act, the sum of one cent. per name contained in said list first to be made, to be paid them out of the treasury of the state.

§ 2. If any assessor or county clerk shall willfully refuse or neglect to perform the duties, or any of them, imposed by this act, he shall, on conviction, be fined in any sum not exceeding five hundred dollars, and be removed from office, and shall not thereafter hold any office of honor or profit in this state for five years after such conviction.

ARTICLE V.

§ 1. The governor, if companies so organize and volunteer, ^{Artillery, cavalry, etc.} may commission the officers of and recognize the organization of artillery companies, companies of cavalry, companies of sappers and miners and an ambulance corps, under the provisions of this act.

§ 2. There shall be filed and kept in the adjutant-general's ^{Rolls of companies.} office, of this state, a complete roll of each of the companies organized under the provisions of this act, and the record of the date of the organization of each company, and of the enlistment of each member thereof.

§ 3. Said roll shall be made annually by the officers of each company, and a copy of the same shall be forwarded to the adjutant-general's office of this state, and the same shall be kept on file in his office.

§ 4. A record of the date of all commissions granted under ^{Record of commissions.} this act shall be kept in the adjutant-general's office, and commissioned officers shall have rank according to the date of their respective commissions.

§ 5. All acts or parts of acts, inconsistent with the provisions of this act, are hereby repealed.

§ 6. Officers and members of volunteer companies elected under the provisions of this act shall not be subject to the orders of officers of the militia of this state not organized under this act.

§ 7. This act shall be in force and take effect from and after its passage.

Approved May 3, 1861.

REVENUE.—ASSESSMENT.

An Act in relation to Burying Grounds, Church Yards, and Lands used by Literary Institutions.

(From Revised Statutes—Appendix, Act No. 49.)

SECTION 1. *Be it enacted by the People of the State of Illinois,* ^{Lot not exceeding ten acres, to be certified to commissioners' court.} That it shall be the duty of societies and the corporations owning, using and appropriating lands, not exceeding ten acres, for burying grounds, church grounds, and grounds for the use of literary institutions, to cause to be certified

When not subject
to taxation.

to the county commissioners' court of the proper county, by some credible person under oath, a full description of the lands by metes and bounds, in whom the title is, and for what purpose and use the land is held; and if it shall appear to said court that such land is not subject to taxation according to the revenue laws of this State, then that part shall be certified by said court to the auditor of public accounts, and the land shall remain exempt from taxation so long as it continues to be used exclusively for the purposes aforesaid.

Approved March 2, 1843.

SHEEP.

An Act for the improvement of Sheep, and to promote their Increase.

Bucks not to run
at large.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That it shall be unlawful for the owner or owners of any buck or bucks, or male sheep over the age of six months, to permit such buck or bucks or male sheep to run at large in any highway or unenclosed grounds or commons in this state, or without the enclosure of said owner or owners, between the fifteenth day of June and the fifteenth day of November in each year hereafter.

Duty of persons
to take up.

§ 2. *And be it further enacted,* That it shall be the duty of any person or persons finding any such sheep running at large as aforesaid, to take up and confine the same, and notify the owner or owners, if known, and in case such owner or owners are not known, then such person so taking up shall give notice thereof in writing, by posting up notices in three public places within the precinct or neighborhood where said sheep are so taken up, within four days after such taking up, describing all plain marks that may be on said sheep, and the owner or owners of such sheep shall be entitled to the same by proving property and paying, or agreeing to pay, all reasonable charges, and such damages as the sheep may have done: *provided,* such charges and damages shall not exceed the value of the sheep, and if the owner or owners shall not comply with the above requisitions within the term of six months from the date of such notice, then in that case the said sheep shall be forfeited, and become the property of the person so taking up the same: *provided,* that if the inhabitants of any county in this state shall think themselves aggrieved by the provisions of this act, the county commissioners or county court of said county shall have power to suspend the operation of this law in such county or counties for a convenient time, by an order of said court, posted on the court house door of said county, and in some public place in each of the several precincts of such county.

Proviso.

Approved February 10, 1849.

WEIGHTS AND MEASURES.

(From Chapter One hundred and eight of the Revised Statutes.)

SECTION 1. There shall be but one standard of measure of length and surface, one of weight and one measure of capacity throughout this state, which shall be in conformity with the standard of measure, length, surface and weight established by Congress. Shall be one standard of weights and measures.

SEC. 2. All commodities sold by heaped measure, shall be duly heaped up in the form of a cone, the outside of the measure, by which the same shall be measured to the extremity of the base of such cone, and such cone to be as high as the articles to be measured will admit. Heaped measure, what shall be.

SEC. 3. The measures used for measuring dry commodities not heaped, shall be stricken with a straight stick or roller, and of the same diameter from end to end. Other measures not heaped.

SEC. 4. Contracts hereafter to be executed, made within this state, for any work to be done, or for any thing to be sold, delivered, done or agreed for by weight or measure, shall be taken and construed to be made according to the standard weight and measure thus ascertained. Contracts to conform to this measure.

SEC. 5. The hundred weight shall consist of one hundred pounds, and twenty such hundreds shall constitute a ton. Hundred weight and ton.

SEC. 6. Whenever wheat, rye, Indian corn, barley, buckwheat or oats shall be sold by the bushel, and no special agreement as to the weight or measurement shall be made by the parties, the bushel shall consist of sixty pounds for wheat, or fifty-four pounds of rye, of fifty-two pounds of Indian corn, of forty-four pounds of barley, of forty pounds of buckwheat, and thirty-two pounds of oats. Weight of grain per bushel.

SEC. 7. The following original standards, made in conformity to the provisions of this chapter, to wit: a yard, a pound, a liquid gallon, and a half bushel, shall be procured by the state sealer of weights and measures, and deposited in a chest in his office, which shall only be opened for the sole purpose of comparing such standards with the copies hereinafter described, unless by a joint resolution of the two houses of the legislature, or on the call of either house for information, or by the order of the governor for scientific purposes. Original standards to be procured by state sealer.

SEC. 8. Copies of the said original standards, to be made of such materials as the state sealer shall direct, shall be deposited by him in the offices of the county sealers of the respective counties of this state, at the expense of said counties, who shall severally be responsible for the preservation of the copies respectively delivered to them. Copies for counties.

SEC. 9. The state sealer shall cause to be impressed on each of the copies of such original standards, the letter "I," and such other additional device as he shall direct, for the particular county; which device shall be recorded in the state sealer's office and a copy thereof delivered to the respective county sealers. Devices impressed on standards.

County sealers to compare and seal weights. SEC. 10. The several county sealers shall compare all weights and measures which shall be brought to them for that purpose, with the above mentioned copies of such standards in their possession ; and when the same are found or made to conform to the legal standards, the officer comparing them shall seal and mark such weights and measures.

County sealers to compare with state sealer once in ten years. SEC. 11. It shall be the duty of the county sealers of weights and measures, to compare the copies in their possession once in every ten years, with those existing in the office of the state sealer ; and every county sealer who neglects to have the copies in their

Penalty for neglect. possession compared as aforesaid, shall pay into the county treasury fifty dollars for county purposes : whenever any county sealer fails for one month to pay the aforesaid penalty, it shall be the duty of the county commissioners' court, to commence suit therefor in their own name, before any justice of the peace of the county, and when collected, the same shall be paid into the county treasury for the uses aforesaid.

Fees of county sealer.

SEC. 12. Each county sealer shall be entitled to receive for his services, at and after the following rates : For sealing and marking every beam, six and a quarter cents ; for sealing and marking measures of extension, at the rate of six and a quarter cents per yard ; not to exceed twenty-five cents for any one measure ; for sealing and marking every weight, two cents ; for sealing and marking liquid and dry measures, if the same be of the capacity of a gallon or more, six and a quarter cents ; of less than a gallon, two cents : they shall also be entitled to a reasonable compensation for making such weights and measures conform to the standard established by this chapter.

Penalty for using weights and measures not conforming to the standard established. SEC. 13. If any person or persons shall hereafter use any weights, measures or beams, in weighing or measuring which shall not be conformable to the standards of this state, established by this chapter, whereby any purchaser of any commodity or article of trade or traffic shall be injured or defrauded, such purchaser may maintain an action on the case against the offender ; and if judgment shall be rendered for the plaintiff, he shall recover five times the damages with costs of suit.

Who shall bestate and county sealers.

SEC. 14. The secretary of state shall be, *ex officio*, state sealer of weights and measures, and the clerks of the county commissioners' court shall be the county sealers of weights and measures for their several counties.

Approved March 3, 1845.

In force February 18, 1847.

An Act to fix the standard weight of Coal.

Bushel to contain 80 lbs.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That whenever mineral coal shall be sold by the bushel within the limits of this state, and no special agreement as to the weight or measurement shall be made

by the parties, the bushel shall consist of eighty pounds, and this shall be the standard weight of a bushel of coal.

§ 2. This act to be in force from and after its passage.

Approved February 18, 1847.

An Act in relation to Weights and Measures.

In force March 1, 1851.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That from and after the passage of this act, whenever any Indian corn shall be sold by the bushel, and no specified agreement as to the weight or measure shall be made by the parties, the bushel of corn shall consist of fifty-six pounds.

Weight of corn.

§ 2. This act to take effect from and after the first day of March next.

Approved February 15, 1851.

An Act to amend An Act concerning Weights and Measures.

In force February 14, 1855.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in General Assembly,* That whenever any of the following articles shall be contracted for, or sold, or delivered, and no special contract or agreement shall be made to the contrary, the weight per bushel shall be as follows, to wit: Shelled corn, fifty-six (56) pounds; corn in the ear, seventy (70) pounds; wheat, sixty (60) pounds; rye, fifty-six (56) pounds; oats, thirty-two (32) pounds; barley, forty-eight (48) pounds; Irish potatoes, sixty (60) pounds; sweet potatoes, fifty-five (55) pounds; white beans, sixty (60) pounds; castor beans, forty-six (46) pounds; clover seed, sixty (60) pounds; timothy seed, forty-five (45) pounds; flax seed, fifty-six (56) pounds; hemp seed, forty-four (44) pounds; blue grass seed, fourteen (14) pounds; buck wheat, fifty-two (52) pounds; dried peaches, thirty-three (33) pounds; dried apples twenty-four (24) pounds; onions, fifty-seven (57) pounds; salt, fifty (50) pounds; stone coal, eighty (80) pounds; malt, thirty-eight (38) pounds; bran, twenty (20) pounds; turnips, fifty-five (55) pounds; hair, (plastering) eight (8) pounds; unslacked lime, eighty (80) pounds; corn meal, forty-eight (48) pounds; fine salt, fifty-five pounds.

Weight of grain sold when there is no agreement as to weight.

§ 2. All laws and parts of laws inconsistent with this act are hereby repealed.

Acts repealed.

Approved February 14, 1855.

ESTRAYS.

In force April 24, 1861. An Act to amend number 39 of the Revised Statutes, concerning "Estrays."

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That chapter number thirty-nine of the Revised Statutes be and is hereby so amended, that hereafter every justice of the peace, before whom any stray or estrays may be brought for appraisal, shall be allowed ten days after the appraisement to make report of the description of the estrays, as is required in the second section of said chapter, to the clerk of the county or the clerk of the county commissioners' court, as the case may be.

Approved February 22, 1861.

REGISTRY LAW.

In force Feb. 15, 1865. An Act for the Registry of Electors and to prevent Fraudulent Voting.

Judges or Inspectors of election constitute "Board of Registry."

Annual meeting of board.

Town meeting excepted.

List of voters.

Session two days.

Proviso.

List of voters in alphabetical order.

In cities.

Names of all voters to be entered.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the persons authorized by law, or appointed pursuant to any town or city ordinance, to act as judges or inspectors of elections in any town, city, or ward, or other election district or precinct in this State, (except the moderator of the town meeting in towns adopting township organization,) shall constitute a "board of registry" for their respective towns, cities, wards, districts, or precincts, and shall meet on Tuesday, three weeks preceding any state, county, city, or town election, (except "town meetings" in towns adopting the township organization law,) at nine o'clock a. m., and proceed to make a list, as hereinafter prescribed, of all persons qualified and entitled to vote at the ensuing election in the election district of which they are judges or inspectors, which list, when completed, shall constitute and be known as the "register of electors" of said election district; and said board may continue their session for the purpose of making said list, two days, if necessary: *Provided*, that at the last election in said district, prior to said meeting, the number of votes cast in said district exceeded two hundred.

SEC. 2. Said registers shall each contain a list of the persons so qualified and entitled to vote in said election district, alphabetically arranged, according to their respective surnames, so as to show, in one column, the name at full length, and in another column, in cities, the residence, by the number of the dwelling, if there be a number, and the name of the street or other location of the dwelling place of each person. It shall be the duty of said board to enter in said lists the names of all persons residing in their election district, whose names appear on the poll list kept in said district at the last preceding election; in cities the number of the dwelling and name of the street or other location,

if the same shall be known to, or can be ascertained by, such board; and for this purpose said board are authorized to take from the office in which they are filed the poll lists made and filed by the judges or inspectors of such district, at the election held next prior to the making of such register. In making said list, the board shall enter thereon, in addition to the names on the poll list, the names of all other persons who are well known to them to be electors in said district; and the names of all persons on the poll list who have died or removed from the district shall be omitted from said register. The said board shall complete, as far as practicable, the said register on the day of their meeting aforesaid, and shall make four copies thereof, and certify the register and each of the copies to be a true list of the voters in their district, so far as the same are known to them. Within two days thereafter, the said original list, together with the list taken from the office, as aforesaid, shall be filed by said board in the office of the town clerk of the town in which said election district may be; but in counties not adopting township organization, said list shall be filed with the judges or inspectors of election of the proper district; or if such election district is in a city, then it shall be filed in the office of the city clerk of said city; and one copy of said list shall be kept by each of said judges or inspectors, and carefully preserved by him for their use on the day or days hereinafter mentioned, for the revision and correction of the same. One copy of said list shall, immediately after its completion, be posted in some conspicuous place where the last preceding election in said district was held, and be accessible to any elector who may desire to examine the same or make copies thereof. Any person who shall take down, tear down, or deface any list so posted, shall be deemed guilty of misdemeanor, and shall be punished by a fine of fifty dollars, or by imprisonment in the county jail for a term of sixty days, or by both fine and imprisonment. The board may, in their discretion, cause printed copies of said list to be posted up in such places as they may direct, and may cause the same to be published in some newspaper in the county in which such district is situated, at an expense not exceeding one cent for each name on said list.

Poll list filed
may be used.

Names omitted.

Completion of
register.

Lists when filed.

Copy to be kept
by Judges and
Inspectors.

Copy of list to be
posted.

Penalty for tear-
ing down.

Printed copies
may be posted.

May be pub-
lished.

In case of new
district, proceed-
ings by Judges
or Inspectors.

List to embrace
names known.

SEC. 3. In case a new election district shall be formed by the organization of a new town, or by the division of any town or ward, or the incorporation of a city or town, the judges or inspectors of the election in the new district thus formed, may make their registry of electors on the day prescribed by this act, in such manner as a majority of them may direct, and for that purpose may make a list, or cause to be made, a certified copy of the poll list or lists of the districts in which such new district is situated, or they may dispense with such list or lists, and proceed to make a register of electors from the best means at their command. Said lists shall only embrace the names of such persons as are known to them to be electors in their

district, and shall be posted up and copies thereof made, as prescribed in the preceding section, and shall be corrected in the same manner that other lists are corrected.

Board shall again meet to revise and complete list.

SEC. 4. The said board shall again meet, on Tuesday of the week preceding the said elections, in their respective election districts, at the place designated for holding the polls of the election, for the purpose of revising, correcting, and completing said lists, and for this purpose, in cities, they shall meet at eight o'clock in the morning, and remain in session until nine o'clock p. m. of that day and the day following; and in other districts they shall meet at nine o'clock in the morning, and remain in session until four o'clock p. m. of that day.

Hours of meeting.

Proceedings of board shall be open.

SEC. 5. The proceedings of said board shall be open, and all persons residing and entitled to vote in said district, shall be entitled to be heard by said board in relation to corrections or additions to said register. One of the lists so kept by said judges or inspectors, as aforesaid, shall be used by them, on the day or days of making corrections or additions, for the purpose of completing the registry for such district.

Duty of board to erase names of non-residents.

SEC. 6. It shall be the duty of said board, at their meeting for revising and correcting said lists, to erase therefrom the name of any person inserted therein who shall be proved by the oath of two legal voters of said district, to the satisfaction of said board, to be non-resident of said district, or otherwise not entitled to vote in said district at the election then next to be held. Any elector residing in said district, and entitled to vote therein, may appear before said board and require his name to be recorded on said alphabetical list. Any person so requiring his name to be so entered on said lists, shall make the same statement as to the street and number thereof, and where he resides, required by the provisions of this act of persons offering their votes at elections; and shall be subject to the same penalties for refusing to give such information, or for falsely giving the same, and shall also be subject to challenge, either by the judges or inspectors, or either of them, or by any other elector whose name appears on said alphabetical list; and the same oaths may be administered by the judges or inspectors as now provided in case of persons offering to vote at an election, and in case no challenge is made, of any person requiring his name to be entered on said alphabetical list, or in case of challenge, if such person shall make oath that would entitle him to vote in case of challenge at an election, then the name of any such person shall be added to the alphabetical poll list of the last preceding year.

Elector may have his name entered

Duty of elector requiring his name to be entered.

Penalty for refusing to give information.

Oath to be administered by judges or inspectors.

Four copies of lists to be certified.

SEC. 7. After the said list shall have been fully completed, the said board shall, within three days thereafter, cause four copies of the same to be made, each of which shall be certified by them to be a correct list of the voters of their district; one of which shall be filed in the office of the town clerk of towns, and in the office of city clerks in cities; and one of which copies

Where filed.

shall be delivered to each of said judges or inspectors. It shall be the duty of the said judges or inspectors so receiving such lists, carefully to preserve the said lists for their use on election day, and to designate two of their number, at the opening of the polls, to check the name of every voter voting in such district, whose name is on the register. No vote shall be received at any State, county, town, or city election in this State, except at town meetings, in towns adopting the township organization law, if the name of the person offering to vote be not on the said register, made on the Tuesday or Wednesday preceding the election, unless the person offering to vote shall furnish to the judges of the election his affidavit, in writing, stating therein that he is an inhabitant of said district and entitled to vote therein at such election, and prove by the oath of a householder and registered voter of the district in which he offers his vote, that he knows such person to be an inhabitant of the district, and if in any city, giving the residence of such person within said district. The oath may be administered by one of the judges or inspectors of the election, at the poll where the vote shall be offered, or by any other person authorized to administer oaths; but no person shall be authorized to receive compensation for administering the oath. Said oath shall be preserved and filed in the office of the town or city clerk; or, in case there be no clerk, then said oath shall be filed with and preserved by the judges or inspectors of the proper district. Any person may [be] challenged, and the same oaths shall be put as now are or hereafter may be prescribed by law.

Duty of judges receiving lists.

No vote received except at town meeting, unless name is on the register.

Affidavit.

Proof by householder.

Oath, by whom administered.

Without compensation.
Oath preserved.

Challenge.

SEC. 8. The clerks at each poll, in addition to the duties now prescribed by law, shall enter on the poll list kept by them, in columns prepared for that purpose, opposite the name of each person voting, the same statement or minute as hereinbefore required of the board in making the registry; but such entry is not to be made by them if the registry contains correctly the name and residence of such voter; and in all cases said clerk shall enter in a column opposite the name of each person not registered, the words "not registered." In cities, every elector, at the time of offering his vote, shall truly state the street in which he resides, and if the house, lodging, or tenement in which he resides is numbered, the number thereof. And the clerks of the polls, in case the name of such elector is not registered, shall truly enter in the appropriate column of the poll list, opposite the name of the elector, the street in which the elector resides, the number, in case the house, lodging, or tenement is numbered; and if the same is not numbered, then the clerk shall enter "not numbered" in the column of the poll list for entering the number. In case of refusal to make the statement as aforesaid, the vote of such an elector shall not be received. Any person who shall wilfully make any false statement in relation thereto, shall be deemed

Additional duty of clerk of election in keeping poll list.

Street and number to be given.

Clerk to enter street and number.

Refusal to make statement.

False statement; punishment for.

guilty of misdemeanor, and shall, upon conviction, be punished with a fine of fifty dollars, or by imprisonment in the county jail in the county for a period of ten days, or by both such fine and imprisonment.

After canvass,
poll lists attached
together and
filed.

SEC. 9. After the canvass of the votes, one of said poll lists and said register so kept and checked as aforesaid, shall be attached together, and shall, on the following day, be filed in the town or city clerk's office (as the case may be) in which said district may be; or in case there be no such clerk, then such poll lists and register shall be filed with and preserved by the judges or inspectors, to be used by the board of registry in making the list of voters at the next election; the other of said poll lists and registers, so kept and checked, (except in town and city elections) shall be returned to the office of the county clerk of the county in which said district may be, at the same time the returns of the elections are made.

Board may ap-
point a clerk.

SEC. 10. The said board may, if necessary, on the day or days of the making and of the corrections of such lists, appoint a clerk to assist them in the discharge of their duties required by this act; and the same oath shall be taken by such clerk as is required by law of clerks of the polls or of elections.

Registers open
to public.

SEC. 11. The registers shall at all times be open to public inspection, at the office of the authorities in which they shall be deposited, without charge.

Compensation of
board and clerks.

SEC. 12. The members of the board of registration and their clerks shall each receive the same compensation as is now allowed by law for judges or inspectors of elections, for each day actually employed in the making and completion of the registry, to be paid to them at the time and in the manner in which they are paid their other fees.

Board may pre-
serve order.

Vacancies.

SEC. 13. The said board shall have and exercise the same power in preserving order at their meetings, under this act, as are given to judges and inspectors of elections for preserving order on election days; and vacancies in said board shall be filled in the same manner that vacancies are now filled at elections.

Punishment for
falsely causing
name to be reg-
istered.

SEC. 14. Any person who shall cause his name to be registered in more than one election district, or who shall cause his name to be registered knowing that he is not a qualified voter in the district where said registry is made, or who shall falsely personate any registered voter, and any person causing, aiding, or abetting any person, in any manner, in either of said acts, shall be punished, for each and every offense, by imprisonment in the State prison for not less than one year. All intentional false swearing before said board of registration shall be deemed wilful and corrupt perjury, and on conviction, punished as such. If any member or officer of said board shall wilfully violate any of the provisions of this act, or be guilty of any fraud in the execution of the duties of his office, he shall be punished for each and every offense by imprisonment in the State prison for not less than one year.

Perjury.

Violation of law;
how punished.

SEC. 15. An Act entitled "An Act to prevent illegal voting at elections," approved February 21, 1861, and an Act entitled "An Act to provide for ascertaining the qualification of voters, and to prevent fraudulent voting," approved February 22, 1861, be and the same are hereby amended by striking out the words "sixty days" in said acts, wherever the same occur, and inserting in the place thereof, the words "thirty days."

Acts of 1861
amended.

SEC. 16. Section five of An Act entitled "An Act to provide for ascertaining the qualifications of voters, and to prevent fraudulent voting," approved February 22, 1861, shall be construed so as to require the number to be indorsed by the judges or inspectors of election on every ballot cast, and in elections, general or special, in pursuance of any law of this State, after the opening of the polls, no adjournment shall be had, nor shall any recess be taken until all the votes cast at such election shall have been counted and the result publicly announced, provided that judges and inspectors of election shall each be allowed the sum of two dollars for each and every day's service by them performed under the requirements of this act.

Act of Feb. 22,
1861, construed.

No recess at
elections.

Compensation of
judges.

SEC. 17. The secretary of state shall cause this law to be printed in pamphlet form, with suitable forms and instructions for carrying it into effect, together with the general election law of the State, and a sufficient number of copies thereof sent to each county clerk in every county in this State to supply each of the officers named in this act with a copy. And it shall be the duty of each of said clerks to immediately transmit a copy of the same to each of the judges or inspectors of election in his county.

Secretary of state
to cause law to
be printed with
forms, and dis-
tributed.

SEC. 18. The necessary blanks for making the registers required by law shall be prepared by the secretary of state, and transmitted to the persons entitled to receive them, in the same manner that blank returns of elections are now transmitted.

Secretary of state
to prepare blanks

SEC. 19. Nothing contained in this act shall be construed in any manner to affect the provisions of any act that has been or may be passed at the present session of the General Assembly, to enable the qualified electors of this State, absent therefrom, in the military service of the United States, in the army or navy thereof, to vote.

Not to affect
other acts at
same session.

SEC. 20. This act shall be in force from and after its passage.
Approved February 15, 1865.

BOARD OF HEALTH.

AN ACT to provide for a Board of Health in each township in those counties adopting township organization.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly.* The supervisors, assessors and town clerk of every township shall constitute a board of health, and on the breaking out of any contagious disease in

Supervisor, as-
sessor and town
clerk, constitute
board of health.

- their township or immediate vicinity, they shall have power to make and enforce any rules and regulations tending to check the spreading of such disease within the limits of such township as they may deem proper; and for this purpose they shall have power to shut up any house where any infected person may be, or remove such person to any pest house within the limits of said township, at the expense of said party so moved, if he be of sufficient ability to pay, otherwise at the expense of said town.¹
- SEC. 2. The township clerk shall keep a full record of all the doings of said board, and report the same at the annual town meeting of such township, and said board shall be allowed for their time spent in the performance of their said duties, the same sum now allowed to supervisors, and the same, together with all bills by them contracted, and all sums of money by them expended, shall be audited by the board of auditors of such town, and be paid in the same manner as the town expenses are now by law paid.²
- SEC. 3. This act shall only be in operation in counties where the board of supervisors shall, by its resolution, accept the same.
- Approved February 16, 1865.
- May make rules and regulations.
- May shut up infected house.
- Town clerk to keep record of doings of board.
- Compensation of board.
- Compensation and bills to be audited.
- Act to be accepted by board of supervisors.

DRAINAGE.

AN ACT to facilitate the Draining of Wet Lands.

- SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That in all the counties of this State adopting township organization, the commissioners of highways shall be and are hereby constituted ex officio, a board of drainage commissioners in their respective towns.*
- SEC. 2. Hereafter when any person or persons owning wet or overflowed lands in any county under township organization in this State, desiring to drain the same, shall find it necessary to run across neighboring lands whose owner or owners will not give consent for the drain to pass through his or their lands, then in that case the person or persons desiring the right of way for the drain shall make application to the said drainage commissioners, in writing, stating through whose premises it is necessary to pass, in order to effect a proper outlet for the proposed drain, and he shall also furnish to each of the owner or owners, or their agent or agents, through whose land it is proposed to pass, a notice, in
- Commissioners of highways to be drainage commissioners.
- Persons owning wet and overflowed lands in counties under township organization may make application to commissioners for drain over other lands.
- Notice in writing to owner or agent.

1 A board of health has no power to take and occupy premises as a pest house without the owner's consent.—*Boon v. City of Utica*, 2 Barb., 104.

2 The rules and regulations, and all doings of the board of health should be reduced to writing. It is held in New York that parol evidence of the orders of the board of health is inadmissible. Their determinations are judicial, and must be in writing.—*Meeker v. Van Ransselaer*, 15 Wend., 397.

writing, stating that he intends to make application to the said commissioners to lay out a drain through his or their land.³

SEC. 3. The commissioners shall agree upon a time not exceeding thirty days from the receipt of the application of the person or persons desiring the drain, when and where they will meet to determine upon such application, and if anything shall prevent the meeting of the commissioners, or any one of them, upon the day specified, then they shall as soon thereafter as possible determine upon another day for meeting, and they themselves shall give notice of such meeting to the parties concerned or their agents.⁴ The application to lay out a drain shall in all cases be made to the commissioners residing in the town in which said drain is to commence.

Commissioners to agree on time of meeting to determine on application.

Commissioners to give notice of meeting.

Application to commissioners of the town.

³ *Form of Application to Commissioners to lay out drain.*

To the Commissioners of Highways of the town of *Tolono*, in the County of *Champaign*, and *ex officio* Board of Drainage Commissioners in said town.

The undersigned person (or persons) owning wet lands (or overflowed lands) in said town of *Tolono*, described as follows, to wit.: (*describe the lands which it is desired to drain*) desires to drain the same. In order to effect a proper outlet for the proposed drain, it is necessary to pass through the premises owned by C. D. and E. F. in said town. The premises of C. D. are described as follows: (*describe the premises with reasonable certainty.*) The premises of E. F. are described as follows: (*describe the premises.*) The said C. D. and E. F. will not give their consent for the desired drain to pass through their said lands. Said drain is to commence in said town of *Tolono*. The undersigned, therefore, applies to you and requests that you will proceed to lay out a drain through said premises of C. D. and E. F., in conformity with the law in such cases.

Dated this — day of —, A. D. 18—.

A. B.

NOTE—Care should be taken to write the application on paper sufficient to enable the commissioners to note their decision on the back of it.

Form of notice to owner or agent of intended application to Commissioners to lay out a drain.

To C. D.:

SIR:—You will take notice that I intend, on the — day of —, A. D. 18—, to make application to the commissioners of highways of the town of *Tolono* to lay out a drain through lands owned by you in said town, (or for which you are agent) described as follows, to wit.: (*Here describe the lands as in the application,*) for the purpose of draining certain lands owned by me, and described as follows: (*describe the lands as in the application.*)

Dated this — day of —, A. D. 18—.

A. B.

⁴ *Form of notice of meeting of Commissioners to determine upon application to lay out a drain.*

To C. D.:

SIR:—You are hereby notified that the commissioners of highways and *ex officio* board of draining commissioners, in the town of *Tolono*, will meet at (*state the place,*) on the — day of —, A. D. 18—, at — o'clock — M., to determine upon the application of A. B. to lay out a

Commissioners to determine, if necessary, to pass through lands proposed.

Direction and breadth of drain.

Commissioners to determine if proposed drain is a benefit to lands it passes through.

If drain is a benefit to other lands, owner required to make the same.

Cases where drain is not of benefit.

Party desiring drain may complete remainder.

When person neglects to make drain, the person interested may enter and make same.

Necessary expense of work may be recovered

When drain is a damage; amount to be assessed to person desiring same.

SEC. 4. Upon meeting, the commissioners shall proceed impartially to determine whether in order effectually to drain the land of the party or parties making the application, it is necessary to pass through the land proposed, and if they shall find it necessary so to do, they shall then determine also the direction which the drain shall run, and also the breadth of the same, granting always that the depth shall be such as to produce a current.

SEC. 5. The commissioners shall also determine whether the proposed drain will be of any practical benefit to the land through which it is to pass, and if so, what portion of the drain the said land owner or owners shall make, or cause to be made. If the commissioners shall be of opinion that the drain proposed will be of sufficient benefit to the land through which it is desired to pass, then they shall decide that the person or persons owning the same shall make or cause to be made the entire drain running across his or their lands, giving a reasonable time for completing the same, not exceeding six months nor less than thirty days. But if they shall be of opinion that the drain proposed will not be of sufficient benefit to the parties owning the land to compensate him or them for constructing the *entire* drain, then they shall decide what portion of the same he or they shall make or cause to be made, giving a reasonable time for completing the same; and the party or parties desiring the drain shall be at liberty to complete the remainder according to the specifications of the commissioners, at his or their own expense.

SEC. 6. But if the person or persons through whose land the drain is ordered to pass, shall neglect or refuse to make or cause the same to be made, within the time and according to the specifications of the commissioners, then the person or persons first making the application for the drain shall be at liberty to enter upon the premises of the person or persons so neglecting or refusing, and make or cause to be made the drain, following the specifications of the said commissioners; and he or they may recover the necessary expense of such work from the person or persons so neglecting or refusing, in an action of debt, in any court having competent jurisdiction in the county in which such labor was done or performed.

SEC. 7. If the commissioners shall be of opinion that the drain, if made, will be of damage to the land through which it is proposed to pass, then they shall assess the amount of the damage to be paid by the person or persons desiring the drain, after payment of which the party or parties so desiring the drain shall be allowed to construct the same at his or their own expense.

drain through lands owned by you (and other lands) mentioned in his said application.

Dated this — day of —, A. D. 18—,

L. M., } Commissioners
O. P., } of
R. S., } Highways.

But in no case shall the commissioners order a drain to be made where the water cannot be conducted into a lake, or pond, or river, or other outlet. Water to be conducted off.

SEC. 8. The commissioners, after having decided either in favor or against the application for a drain, shall note their decision on the back of the application, and file the same in the office of the town clerk, and the town clerk shall enter upon his book the date of such filing.⁵ Commissioners to note their decision on back of application.

SEC. 9. The fees of the drainage commissioners shall be the same as is now allowed by law for their services as commissioners of highways, and shall be paid in the same manner. Fees of commissioners.

SEC. 10. Either party feeling aggrieved by the decision of the commissioners, either in locating or failing to locate the drain, may at any time within fifteen days from the filing of such decision, appeal from the same, by giving ten days' notice in writing to the opposite party or parties. Said appeal shall be taken before the supervisor, one justice of the peace, and the town clerk of the town in which the drain is to originate: *Provided*, that in case either of these persons shall be interested personally in the land or lands through which it is proposed to pass, then the Party aggrieved may appeal within fifteen days.
Ten days' notice.
Appeal to whom taken.
In case of interest

⁵*Form of Decision of Commissioners to be noted on the back of the application.*

The said commissioners of highways having met pursuant to agreement, and due notice to all parties interested, do determine that, in order effectually to drain the land of the person making the within application, it is necessary to pass through the lands of the said C. D. and E. F. as proposed. We have, therefore, laid out a drain across said lands running in an *easterly* direction (or as the case may be) through the same, the location of which is shown more particularly by the annexed plat. (*It would be advisable to annex a plat of the lands, showing the location of the drain,*) and that said drain shall be four feet in breadth at the top and two feet at the bottom, (or as the case may be, *setting forth such further dimensions or directions as may be deemed proper.*) That said drain will be of some practicable benefit to each parcel of land through which it runs, and that each owner mentioned within shall make the first ten rods thereof on his said land (or as the case may be,) which each should complete by the — day of —, A. D. 18—.

(Or say thus, according to circumstances:) Said commissioners are of opinion that the drain proposed will be of such benefit to the lands described within, through which it is desired to pass, that the persons owning the same should make the entire drain across their said lands, and which each should complete by the — day of —, A. D. 18—.

(In case damages are allowed, then say:) Said commissioners are of opinion that said drain, if made, will be of damage to the said lands through which it is proposed to pass, and do assess the damage of said C. D. at \$—, and the damage of E. F. at \$—.

Dated this — day of —, A. D. 18—.

L. M.,	}	Commissioners of Highways.
O. P.,		
R. S.,		

NOTE — It is believed that the foregoing suggestions are sufficient to enable the commissioners to frame an order to suit the occasion of each particular case that may arise under the law.

other two shall select some disinterested person to act with them.⁶

Time to be fixed
for hearing ap-
peal.

In case decision
is reversed.

Changes to be
specified in
writing.
Statement to be
filed in town
clerk's office.
Decision final.

SEC. 11. The supervisor, justice of the peace and town clerk, (in case none are interested as aforesaid,) shall, as soon as practicable, fix upon a day when they will review the action of the said drainage commissioners, and hear the reasons for and against the laying of the drain. They shall then, after so hearing, determine whether the action of the commissioners was in their judgment proper, and if they reverse the decision of the commissioners in whole or in part, they shall state the same in writing, specifying what changes they have made, whether they have relocated the drain, or reapportioned the labor, or reassessed the damage, if any there be, which statement shall be filed with the town clerk for inspection, and *their* decision shall be final in all cases pertaining to the subject.⁷

6 Form of Appeal from Decision of Commissioners.

To *G. H.*, Supervisor; *I. J.*, one of the Justices of the Peace; and *K. L.*, Town Clerk of the town of *Belmont*, County of *Iroquois* :

The undersigned feeling aggrieved by the decision of the commissioners of highways, of said town of *Belmont*, in locating (or failing to locate) a certain drain applied for by me across the lands of *C. D.* and *E. F.*, in said town, set forth in my application, upon the back of which the decision of said commissioners is noted, and which was filed in the town clerk's office on the — day of —, A. D. 18—, does appeal to you from said decision to the end that you may review the same as provided by law in such cases.

Dated this — day of —, A. D. 18—.

A. B.

Form of Notice of Appeal from Decision of Commissioners.

To *C. D.* :

SIR:—You will take notice that I shall, on the — day of — A. D. 18—, take an appeal, in accordance with the law in such cases, to *G. H.*, supervisor; *I. J.*, one of the justices of the peace, and *K. L.*, town clerk of the town of *Belmont*, from the decision of the commissioners of highways of said town, in locating a certain drain applied for by me (or as the case may be) across lands owned by you (as the case may be) described in my application, upon the back of which application the decision of said commissioners is noted, and was filed in the town clerk's office on the — day of —, A. D. 18—.

Dated this — day of —, A. D. 18—.

A. B.

7 Form of Statement of Supervisor, Justice of the Peace and Town Clerk of their Decision on Appeal.

Vermillion County, }
Town of *Belmont*, } ss.

An appeal having been taken by *A. B.* to the undersigned supervisor, justice of the peace and town clerk of said town of *Belmont*, from the decision of the commissioners of highways of said town, filed in the town clerk's office on the — day of —, A. D. 18—, in locating a certain drain applied for by said *A. B.*, due notice of said appeal having been given, we did on the — day of —, A. D. 18—, having duly fixed on that day therefor, proceed and review the action of said commissioners, and did hear all such reasons as were offered for and against the laying of said drain, and do determine that the action of said commissioners was in all things proper.

SEC. 12. In all cases of appeal, the persons hearing and deciding the same shall be entitled to two dollars per day for the time necessarily employed in the case; and if the action of the drainage commissioners is sustained, then the cost shall be paid by the party taking the appeal. But if said decision shall be reversed in whole or in part, then the fees of the said officers shall be paid from the township funds.

Compensation of officers.

Costs, by whom paid.
When fees paid from town fund.

SEC. 13. In all cases where the commissioners shall have ordered a drain through the lands of non-resident owner or owners, and such owner or owners will not make nor pay for making such drain as ordered, then it shall be the duty of the commissioners to assess the necessary cost of constructing the drain against the land, and return the same to the county clerk in such county, who shall enter the amount with other taxes, against the said land, and when the same shall have been collected as other taxes are collected, he shall pay the amount to the person or persons making or causing the drain to have been made.

Drain through non-resident lands, cost to be assessed against same.

Assessment to be returned to county clerk.

Amount to whom paid.

SEC. 14. Nothing in this act shall authorize the assessment of more than one-half the expense or cost of any drain upon uninclosed lands through which such drain may be run.

Only one-half of cost to be assessed to uninclosed lands.

SEC. 15. This act shall not apply to the counties of McHenry and Kane, and this act shall not be construed to conflict with existing laws for drainage in the county of Cook.

McHenry and Kane counties not included.

SEC. 16. This act shall be deemed a public act, and be in force from and after its passage.

Approved February 16, 1865.

(If the decision of the commissioners is reversed, then say:) and do reverse the decision of said commissioners, and do determine that *(Here state the decision for which the form and suggestions given for the commissioners can be used according to circumstances.)*

Dated this — day of —, A. D., 18—.

G. H., Supervisor.

I. J., Justice of the Peace.

K. L., Town Clerk.

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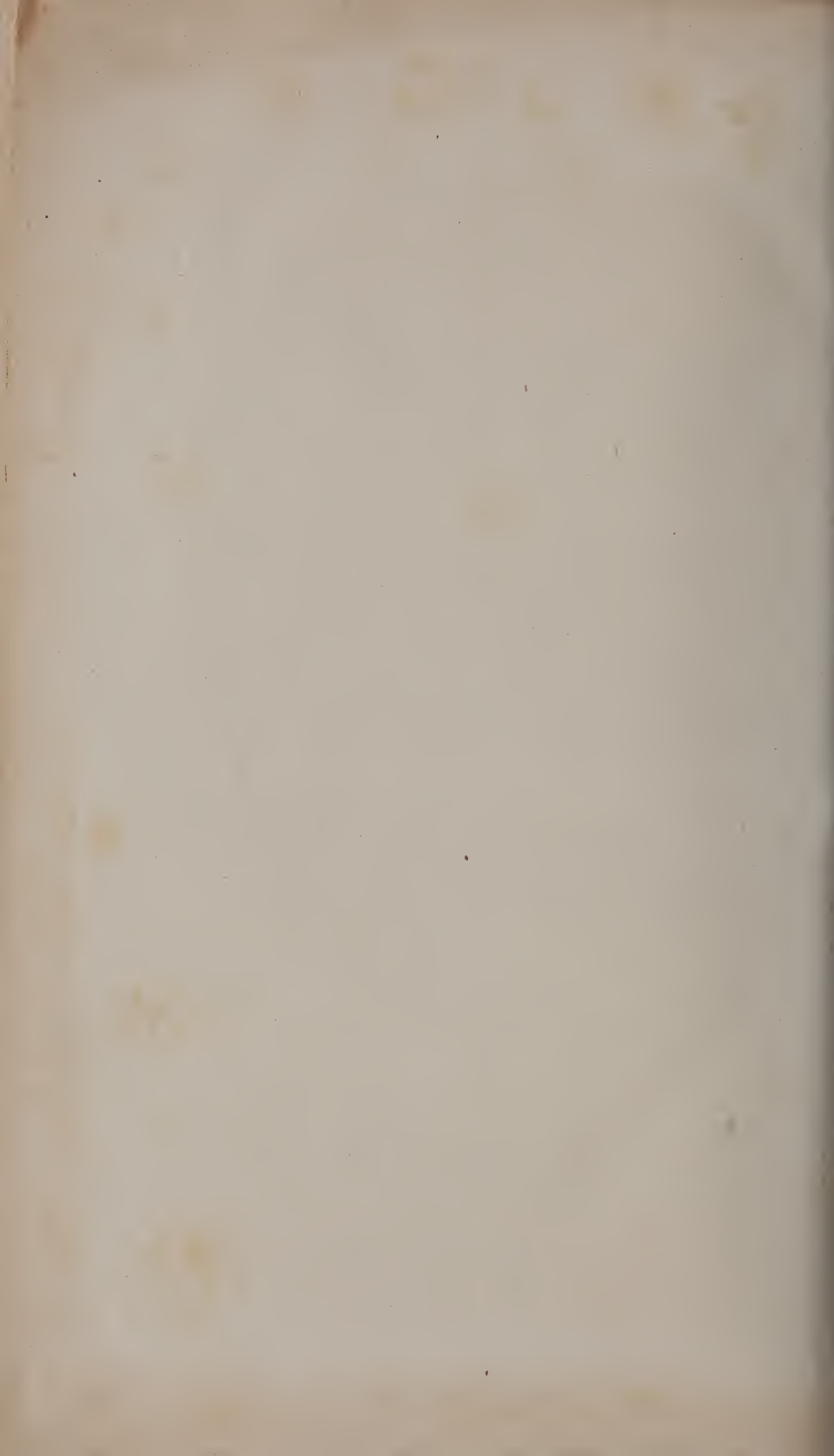
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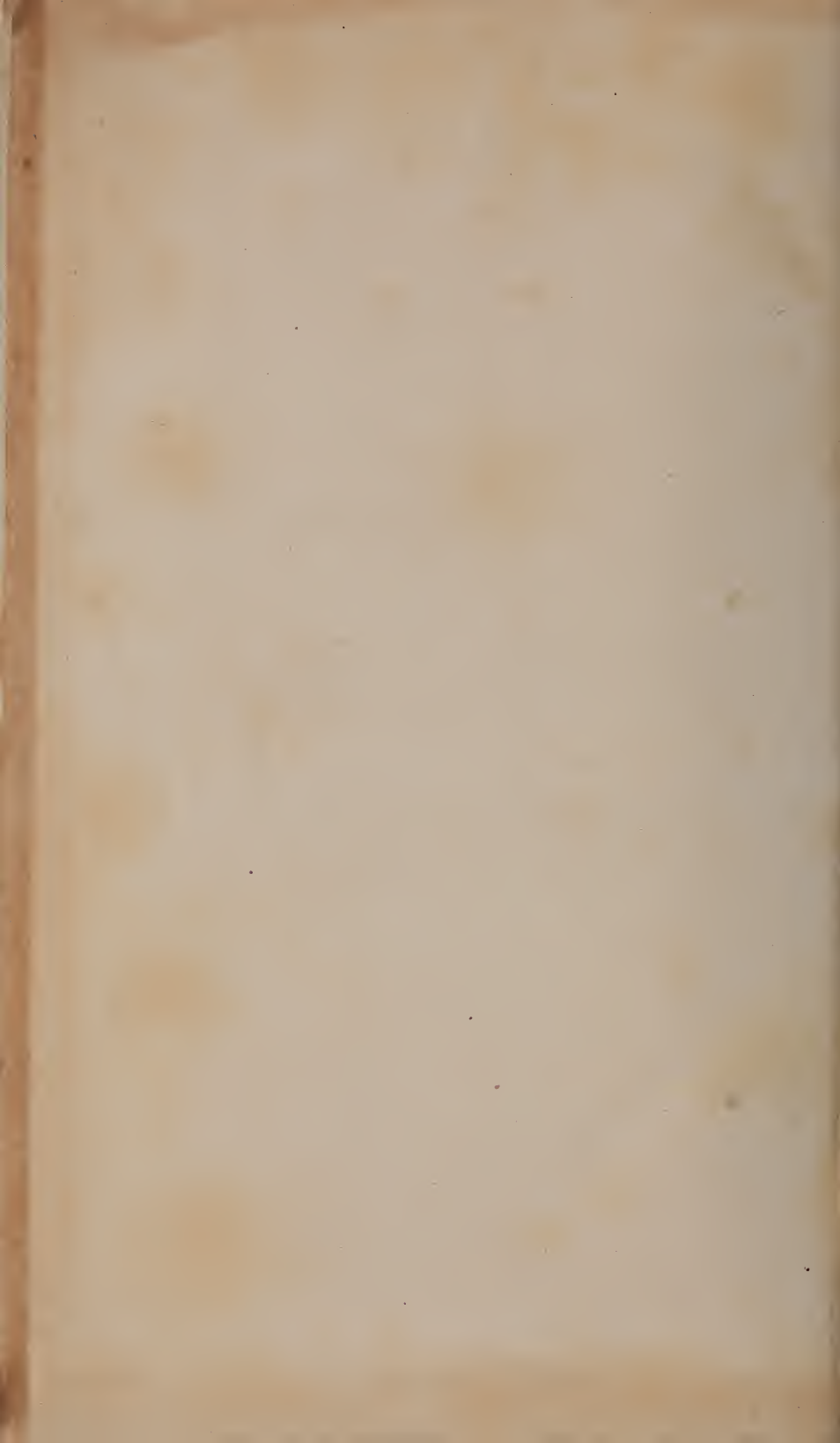
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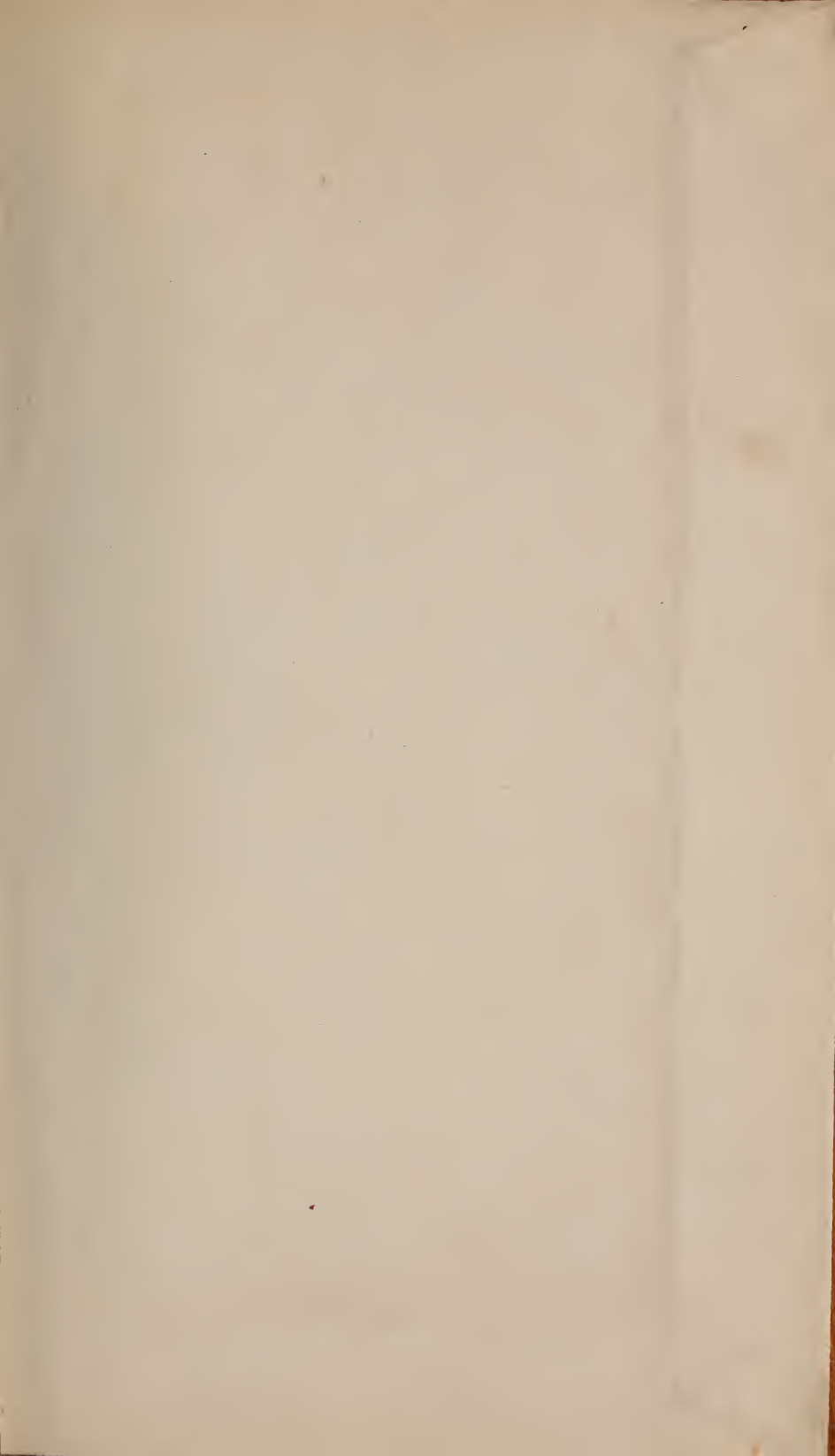
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